



# Virginia Register of Regulations

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**THE VIRGINIA REGISTER OF REGULATIONS** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, 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 on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

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

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

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

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

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

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**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **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**; **Jane M. Roush**.

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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### October 2008 through August 2009

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
<b>FINAL INDEX Volume 24</b>		<b>October 2008</b>
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
<b>INDEX 1 Volume 25</b>		<b>January 2009</b>
25:8	December 3, 2008	December 22, 2008
25:9	December 16, 2008 ( <b>Tuesday</b> )	January 5, 2009
25:10	December 30, 2008 ( <b>Tuesday</b> )	January 19, 2009
25:11	January 14, 2009	February 2, 2009
25:12	January 28, 2009	February 16, 2009
25:13	February 11, 2009	March 2, 2009
25:14	February 25, 2009	March 16, 2009
<b>INDEX 2 Volume 25</b>		<b>April 2009</b>
25:15	March 11, 2009	March 30, 2009
25:16	March 25, 2009	April 13, 2009
25:17	April 8, 2009	April 27, 2009
25:18	April 22, 2009	May 11, 2009
25:19	May 6, 2009	May 25, 2009
25:20	May 20, 2009	June 8, 2009
<b>INDEX 3 Volume 25</b>		<b>July 2009</b>
25:21	June 3, 2009	June 22, 2009
25:22	June 17, 2009	July 6, 2009
25:23	July 1, 2009	July 20, 2009
25:24	July 15, 2009	August 3, 2009
25:25	July 29, 2009	August 17, 2009

\*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 Spring 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 7, dated December 10, 2007, and fast-track regulations published through *Virginia Register* Volume 24 Issue 10, dated January 21, 2008). 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 30-45-10 through 1 VAC 30-45-860	Added	24:25 VA.R. 3449-3506	10/1/08
1 VAC 30-46-10 through 1 VAC 30-46-210	Added	24:25 VA.R. 3506-3523	10/1/08
1 VAC 50-10-60 through 1 VAC 50-10-150	Repealed	25:2 VA.R. 119	10/29/08
1 VAC 50-11-10 through 1 VAC 50-11-110	Added	25:2 VA.R. 119-122	10/29/08
1 VAC 55-10-10 through 1 VAC 55-10-50	Repealed	25:2 VA.R. 122	10/29/08
1 VAC 55-11-10 through 1 VAC 55-11-110	Added	25:2 VA.R. 122-125	10/29/08
1 VAC 75-10-10 through 1 VAC 75-10-40	Repealed	24:25 VA.R. 3523	9/17/08
1 VAC 75-11-10 through 1 VAC 75-11-110	Added	24:25 VA.R. 3523-3526	9/17/08
<b>Title 2. Agriculture</b>			
2 VAC 5-30-10	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-30-20	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-50-20	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-70	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-100	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-110	Amended	24:17 VA.R. 2321	6/12/08
2 VAC 5-90-30	Amended	24:17 VA.R. 2322	6/12/08
2 VAC 5-100-10 through 2 VAC 5-100-40	Repealed	24:26 VA.R. 3707	10/18/08
2 VAC 5-150-10	Amended	24:17 VA.R. 2323	6/12/08
2 VAC 5-180-20	Amended	24:17 VA.R. 2326	6/12/08
2 VAC 5-180-30	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-50	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-60	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-80	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-120	Amended	24:17 VA.R. 2328	6/12/08
2 VAC 5-206-10 through 2 VAC 5-206-50	Added	24:25 VA.R. 3527-3531	10/3/08
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 5-330-30	Amended	25:2 VA.R. 126	10/15/08
2 VAC 5-335-10 through 2 VAC 5-335-130	Added	25:2 VA.R. 126-129	10/15/08
2 VAC 5-390-180	Amended	24:15 VA.R. 2023	3/11/08
2 VAC 5-400-5	Added	24:17 VA.R. 2330	6/12/08
2 VAC 5-420-30	Amended	24:20 VA.R. 2838	5/21/08
2 VAC 5-420-80	Amended	24:20 VA.R. 2840	5/21/08
2 VAC 5-501-80	Amended	24:17 VA.R. 2332	6/12/08
2 VAC 5-501-100	Amended	24:17 VA.R. 2336	6/12/08
2 VAC 5-510-10	Amended	24:17 VA.R. 2340	6/12/08
2 VAC 5-510-50	Amended	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-60	Repealed	24:17 VA.R. 2341	6/12/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 5-510-70	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-80	Repealed	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-90	Amended	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-100	Repealed	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-110	Amended	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-120	Repealed	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-130	Amended	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-140	Repealed	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-150	Amended	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-160	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-170	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-180	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-190	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-200	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-210	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-220	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-230	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-240	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-250	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-260	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-270	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-290	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-300	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-310	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-320	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-330	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-340	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-350	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-360	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-390	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-400	Repealed	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-410	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-420	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-500	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-510	Amended	24:17 VA.R. 2353	6/12/08
2 VAC 5-531-50	Amended	24:16 VA.R. 2235	5/29/08
2 VAC 5-531-140	Amended	24:16 VA.R. 2241	5/29/08
2 VAC 15-20-81	Amended	24:16 VA.R. 2242	4/14/08
2 VAC 20-10-80	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-10-100	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-10-110	Amended	24:24 VA.R. 3331	9/18/08
2 VAC 20-20-70	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-130	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-210	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-40-50	Amended	24:17 VA.R. 2357	6/12/08
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-50-140 emer	Amended	24:11 VA.R. 1344	1/9/08-1/8/09
3 VAC 5-50-145 emer	Added	24:11 VA.R. 1345	1/9/08-1/8/09
3 VAC 5-70-220	Amended	24:14 VA.R. 1891	5/1/08
3 VAC 5-70-225 emer	Added	24:10 VA.R. 1257	1/2/08-1/1/09
<b>Title 4. Conservation and Natural Resources</b>			

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 3-10-10	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-10-20	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-10-30	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-11-10 through 4 VAC 3-11-110	Added	25:2 VA.R. 130-132	10/29/08
4 VAC 5-10-10	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-10-20	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-10-30	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-11-10 through 4 VAC 5-11-110	Added	25:2 VA.R. 133-136	10/29/08
4 VAC 5-50-10 through 4VAC5-50-170	Repealed	24:17 VA.R. 2357	5/28/08
4 VAC 15-20-50	Amended	24:10 VA.R. 1258	1/1/08
4 VAC 15-20-130	Amended	24:10 VA.R. 1259	1/1/08
4 VAC 15-20-200	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-20-210	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-30-5	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-30-40	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-40-30	Amended	24:23 VA.R. 3108	7/1/08
4 VAC 15-40-70	Amended	24:23 VA.R. 3108	7/1/08
4 VAC 15-40-190	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-40-210	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-40-220	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-20	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-25	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-71	Amended	24:24 VA.R. 3332	7/8/08
4 VAC 15-50-81	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-91	Amended	24:23 VA.R. 3110	7/1/08
4 VAC 15-70-50	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-70-70	Added	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-22	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-70	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:24 VA.R. 3332	7/8/08
4 VAC 15-90-90	Amended	24:23 VA.R. 3113	7/1/08
4 VAC 15-90-91	Amended	24:23 VA.R. 3114	7/1/08
4 VAC 15-110-10	Amended	24:23 VA.R. 3117	7/1/08
4 VAC 15-110-75	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-11	Added	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-20	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-31	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-40	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-50	Amended	24:23 VA.R. 3119	7/1/08
4 VAC 15-240-51	Added	24:23 VA.R. 3119	7/1/08
4 VAC 15-260-140	Amended	24:24 VA.R. 3333	7/8/08
4 VAC 15-270-50	Repealed	24:24 VA.R. 3334	7/8/08
4 VAC 15-320-25	Amended	24:10 VA.R. 1265	1/1/08
4 VAC 15-330-30	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-100	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-120	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-160	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-171	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-330-200	Amended	24:10 VA.R. 1273	1/1/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-340-10	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-30	Amended	24:10 VA.R. 1274	1/1/08
4 VAC 15-350-20	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-30	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-60	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-70	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-360-10	Amended	24:10 VA.R. 1276	1/1/08
4 VAC 15-410-10 through 4 VAC 15-410-160	Added	24:23 VA.R. 3119-3125	7/1/08
4 VAC 20-40-10 through 4 VAC 20-40-40	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-10	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-20	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-30	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-140-10	Amended	24:21 VA.R. 2917	3/17/09
4 VAC 20-140-20	Amended	24:21 VA.R. 2917	3/17/09
4 VAC 20-140-25	Added	24:21 VA.R. 2917	3/17/09
4 VAC 20-150-30	Amended	24:10 VA.R. 1277	1/1/08
4 VAC 20-252-55	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-120	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-150	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-160	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-230	Amended	24:10 VA.R. 1281	1/1/08
4 VAC 20-270-10 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-10	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-30	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-40	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-50	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-55	Amended	24:15 VA.R. 2023	3/1/08
4 VAC 20-270-55	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-56	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-58	Added	24:19 VA.R. 2751	4/30/08
4 VAC 20-320-50	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-450-30	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-530-20	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-530-31	Amended	24:13 VA.R. 1735	2/5/08
4 VAC 20-530-32	Repealed	24:12 VA.R. 1457	2/1/08
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 20-610-30	Amended	24:15 VA.R. 2024	3/1/08
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 20-620-30	Amended	24:10 VA.R. 1281	12/27/07
4 VAC 20-620-40 emer	Amended	24:8 VA.R. 962	11/28/07-12/27/07
4 VAC 20-620-40	Amended	24:10 VA.R. 1282	12/27/07
4 VAC 20-620-50	Amended	24:15 VA.R. 2025	3/1/08
4 VAC 20-620-70	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-670-20	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-25	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-30	Amended	24:19 VA.R. 2752	4/30/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-670-40	Amended	24:19 VA.R. 2753	4/30/08
4 VAC 20-700-10 emer	Amended	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-15 emer	Added	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-15	Added	24:21 VA.R. 2918	6/1/08
4 VAC 20-700-20	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-700-20 emer	Amended	24:19 VA.R. 2754	5/1/08-5/31/08
4 VAC 20-700-20	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-720-40	Amended	24:12 VA.R. 1457	2/1/08
4 VAC 20-720-50	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-60	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-80	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-106 emer	Amended	25:1 VA.R. 24	9/1/08-9/30/08
4 VAC 20-750-10	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-10	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-30	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-30	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-40	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-50	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-751-15	Added	24:15 VA.R. 2027	3/1/08
4 VAC 20-751-20	Amended	24:15 VA.R. 2027	3/1/08
4 VAC 20-752-20	Amended	24:19 VA.R. 2754	4/30/08
4 VAC 20-752-30	Amended	24:16 VA.R. 2246	4/1/08
4 VAC 20-752-30	Amended	24:19 VA.R. 2755	4/30/08
4 VAC 20-880-10 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-10	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-880-20 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-20	Amended	24:19 VA.R. 2756	4/30/08
4 VAC 20-880-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-880-30	Amended	24:19 VA.R. 2757	4/30/08
4 VAC 20-880-30	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-910-45	Amended	24:25 VA.R. 3537	8/1/08
4 VAC 20-950-47	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48.1	Amended	24:15 VA.R. 2029	3/1/08
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 20-1040-35	Added	24:12 VA.R. 1459	2/1/08
4 VAC 20-1090-10 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:8 VA.R. 965	12/1/07
4 VAC 20-1090-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:19 VA.R. 2760	4/30/08
4 VAC 20-1090-30	Amended	24:21 VA.R. 2920	6/1/08
4 VAC 20-1130-10 through 4 VAC 20-1130-70	Added	24:8 VA.R. 968-970	12/1/07
4 VAC 20-1140-10	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-20	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-30	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1150-10	Added	24:25 VA.R. 3538	8/1/08
4 VAC 20-1150-20	Added	24:25 VA.R. 3538	8/1/08
4 VAC 25-130 (Forms)	Amended	24:11 VA.R. 1424	--

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 25-150-90	Amended	24:17 VA.R. 2359	6/12/08
4 VAC 50-10-10	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-10-20	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-10-30	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-11-10 through 4 VAC 50-11-110	Added	25:2 VA.R. 138-141	10/29/08
4 VAC 50-20-20 through 4 VAC 50-20-90	Amended	24:25 VA.R. 3539-3554	9/26/08
4 VAC 50-20-51	Added	24:25 VA.R. 3544	9/26/08
4 VAC 50-20-52	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-54	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-58	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-59	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-100 through 4 VAC 50-20-140	Repealed	24:25 VA.R. 3554-3558	9/26/08
4 VAC 50-20-105	Added	24:25 VA.R. 3554	9/26/08
4 VAC 50-20-125	Added	24:25 VA.R. 3557	9/26/08
4 VAC 50-20-150 through 4 VAC 50-20-240	Amended	24:25 VA.R. 3558-3563	9/26/08
4 VAC 50-20-155	Added	24:25 VA.R. 3558	9/26/08
4 VAC 50-20-165	Added	24:25 VA.R. 3559	9/26/08
4 VAC 50-20-175	Added	24:25 VA.R. 3560	9/26/08
4 VAC 50-20-177	Added	24:25 VA.R. 3561	9/26/08
4 VAC 50-20-250	Repealed	24:25 VA.R. 3564	9/26/08
4 VAC 50-20-260 through 4 VAC 50-20-320	Amended	24:25 VA.R. 3564-3565	9/26/08
4 VAC 50-20-330 through 4 VAC 50-20-400	Added	24:25 VA.R. 3565-3567	9/26/08
4 VAC 50-60-10	Amended	24:20 VA.R. 2842	7/9/08
4 VAC 50-60-1200	Amended	24:20 VA.R. 2852	7/9/08
4 VAC 50-60-1210	Amended	24:20 VA.R. 2853	7/9/08
4 VAC 50-60-1220	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1230	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1240	Amended	24:20 VA.R. 2856	7/9/08
<b>Title 5. Corporations</b>			
5 VAC 5-20-20	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-140	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-150	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-170	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-240	Amended	24:11 VA.R. 1349	2/15/08
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 15-31-320	Amended	24:25 VA.R. 3568	9/18/08
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 15-62-110	Amended	24:13 VA.R. 1736	3/3/08
6 VAC 15-62 (Forms)	Amended	24:12 VA.R. 1523	--
6 VAC 20-80-10 through 6 VAC 20-80-90	Amended	24:23 VA.R. 3127-3132	9/1/08
6 VAC 20-80-100	Repealed	24:23 VA.R. 3132	9/1/08
6 VAC 20-80-110	Repealed	24:23 VA.R. 3132	9/1/08
6 VAC 20-160-10	Amended	25:2 VA.R. 141	10/29/08
6 VAC 20-160-20	Amended	25:2 VA.R. 142	10/29/08
6 VAC 20-160-30	Amended	25:2 VA.R. 142	10/29/08
6 VAC 20-160-40	Amended	25:2 VA.R. 143	10/29/08
6 VAC 20-160-60	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-70	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-80	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-100	Amended	25:2 VA.R. 145	10/29/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
6 VAC 20-160-120	Amended	25:2 VA.R. 145	10/29/08
6 VAC 20-171-10 emer	Amended	24:23 VA.R. 3134	7/1/08 - 6/30/09
6 VAC 20-171-50 emer	Amended	24:23 VA.R. 3137	7/1/08 - 6/30/09
6 VAC 20-171-120 emer	Amended	24:23 VA.R. 3138	7/1/08 - 6/30/09
6 VAC 20-171-230 emer	Amended	24:23 VA.R. 3139	7/1/08 - 6/30/09
6 VAC 20-171-320 emer	Amended	24:23 VA.R. 3141	7/1/08 - 6/30/09
6 VAC 20-171-350 emer	Amended	24:23 VA.R. 3142	7/1/08 - 6/30/09
6 VAC 20-171-360 emer	Amended	24:23 VA.R. 3145	7/1/08 - 6/30/09
6 VAC 20-250-10 through 6 VAC 20-250-380	Added	24:23 VA.R. 3146-3161	8/20/08
6 VAC 35-10-10 through 6 VAC 35-10-150	Repealed	24:25 VA.R. 3573	9/17/08
6 VAC 35-11-10 through 6 VAC 35-11-110	Added	24:25 VA.R. 3574-3576	9/17/08
6 VAC 35-51-10 through 6 VAC 35-51-1100	Added	24:25 VA.R. 3577-3610	9/17/08
6 VAC 40-10-10 through 6 VAC 40-10-90	Repealed	25:2 VA.R. 146	10/30/08
6 VAC 40-11-10 through 6 VAC 40-110	Added	25:2 VA.R. 147-149	10/30/08
6 VAC 40-20-30	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-120	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-130	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-160	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08
<b>Title 7. Economic Development</b>			
7 VAC 10-20-10 through 7 VAC 10-20-350	Repealed	24:26 VA.R. 3719	9/1/08
7 VAC 10-21-10 through 7 VAC 10-21-610	Added	24:26 VA.R. 3719-3729	9/1/08
<b>Title 8. Education</b>			
8 VAC 20-650-30	Amended	24:21 VA.R. 2936	9/15/08
<b>Title 9. Environment</b>			
9 VAC 10-20-120	Amended	24:22 VA.R. 3040	8/6/08
9 VAC 20-60-18	Amended	24:9 VA.R. 1106	2/6/08
9 VAC 20-80-10	Amended	25:2 VA.R. 150	11/1/08
9 VAC 20-80-60	Amended	25:2 VA.R. 160	11/1/08
9 VAC 20-80-250	Amended	25:2 VA.R. 166	11/1/08
9 VAC 20-80-260	Amended	25:2 VA.R. 176	11/1/08
9 VAC 20-80-270	Amended	25:2 VA.R. 183	11/1/08
9 VAC 20-80-280	Amended	25:2 VA.R. 191	11/1/08
9 VAC 20-80-485	Amended	25:2 VA.R. 193	11/1/08
9 VAC 20-80-500	Amended	25:2 VA.R. 200	11/1/08
9 VAC 20-80-510	Amended	25:2 VA.R. 203	11/1/08
9 VAC 25-32 (Forms)	Amended	24:13 VA.R. 1738	--
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 25-120-80	Amended	24:18 VA.R. 2502	6/11/08
9 VAC 25-193-40	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-193-70	Amended	24:18 VA.R. 2517	6/11/08
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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-196-70	Amended	24:18 VA.R. 2532	6/11/08
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
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 25-260-30	Amended	24:13 VA.R. 1741	*
9 VAC 25-260-30	Amending	24:26 VA.R. 3747	8/12/08
9 VAC 25-640 Appendices I through IX	Amended	25:2 VA.R. 217-231	11/1/08
9 VAC 25-640-10	Amended	25:2 VA.R. 206	11/1/08
9 VAC 25-640-20	Amended	25:2 VA.R. 209	11/1/08
9 VAC 25-640-30	Amended	25:2 VA.R. 209	11/1/08
9 VAC 25-640-50	Amended	25:2 VA.R. 210	11/1/08
9 VAC 25-640-70 through 9 VAC 25-640-120	Amended	25:2 VA.R. 210-213	11/1/08
9 VAC 25-640-130	Repealed	25:2 VA.R. 213	11/1/08
9 VAC 25-640-150 through 9 VAC 25-640-230	Amended	25:2 VA.R. 213-217	11/1/08
9 VAC 25-640-250	Amended	25:2 VA.R. 217	11/1/08
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	24:18 VA.R. 2540	6/11/08
9 VAC 25-720-120	Amended	24:21 VA.R. 2940	8/7/08
9 VAC 25-720-130	Amended	24:18 VA.R. 2548	6/11/08
9 VAC 25-740-10 through 9 VAC 25-740-210	Added	24:26 VA.R. 3748-3773	10/1/08
9 VAC 25-820-10	Amended	24:21 VA.R. 2942	8/7/08
9 VAC 25-820-20	Amended	24:21 VA.R. 2944	8/7/08
9 VAC 25-820-70	Amended	24:21 VA.R. 2944	8/7/08
<b>Title 10. Finance and Financial Institutions</b>			
10 VAC 5-20-30	Amended	24:22 VA.R. 3043	6/23/08
10 VAC 5-40-5	Added	24:22 VA.R. 3045	7/1/08
10 VAC 5-40-60	Added	24:22 VA.R. 3045	7/1/08
10 VAC 5-160-10	Amended	24:26 VA.R. 3775	8/10/08
10 VAC 5-160-70	Added	24:26 VA.R. 3776	8/10/08
10 VAC 5-160-80	Added	24:26 VA.R. 3776	8/10/08
<b>Title 11. Gaming</b>			

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

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
11 VAC 10-130-60	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-10	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-20	Repealed	24:16 VA.R. 2248	4/14/08
11 VAC 10-180-25	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-35	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-60	Amended	24:16 VA.R. 2251	4/14/08
11 VAC 10-180-70	Amended	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-75	Added	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-80	Amended	24:16 VA.R. 2257	4/14/08
11 VAC 10-180-85	Amended	24:16 VA.R. 2258	4/14/08
11 VAC 10-180-110	Amended	24:16 VA.R. 2259	4/14/08
<b>Title 12. Health</b>			
12 VAC 5-90-370	Added	24:19 VA.R. 2777	7/1/08
12 VAC 5-195-10 through 12 VAC 5-195-670	Added	24:19 VA.R. 2778-2802	5/26/08
12 VAC 5-220-10	Amended	24:11 VA.R. 1350	3/5/08
12 VAC 5-220-110	Amended	24:11 VA.R. 1353	3/5/08
12 VAC 5-220-110	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-220-130	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-160	Amended	25:1 VA.R. 25	10/15/08
12 VAC 5-220-200	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-200	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-371-150	Amended	24:11 VA.R. 1357	3/5/08
12 VAC 5-381-10 through 12VAC5-381-40	Amended	24:11 VA.R. 1358-1361	3/5/08
12 VAC 5-381-60 through 12VAC5-381-100	Amended	24:11 VA.R. 1361-1362	3/5/08
12 VAC 5-381-120	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-140	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-150	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-240	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-381-280	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-391-10	Amended	24:11 VA.R. 1364	3/5/08
12 VAC 5-391-30 through 12 VAC 5-391-100	Amended	24:11 VA.R. 1366-1368	3/5/08
12 VAC 5-391-120	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-130	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-150	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-160	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-250	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-391-280	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-410-230	Amended	24:11 VA.R. 1371	3/5/08
12 VAC 5-481-10	Amended	24:18 VA.R. 2566	6/12/08
12 VAC 5-481-10	Amended	25:2 VA.R. 231	11/1/08
12 VAC 5-481-20	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-30	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-90	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-100	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-110	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-130	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-150	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-200	Repealed	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-230 through 12 VAC 5-481-270	Amended	24:18 VA.R. 2594-2595	6/12/08
12 VAC 5-481-340	Amended	24:18 VA.R. 2595	6/12/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-370 through 12 VAC 5-481-450	Amended	24:18 VA.R. 2597-2607	6/12/08
12 VAC 5-481-390	Amended	25:2 VA.R. 256	11/1/08
12 VAC 5-481-400	Amended	25:2 VA.R. 256	11/1/08
12 VAC 5-481-450	Amended	25:2 VA.R. 257	11/1/08
12 VAC 5-481-451	Added	24:25 VA.R. 3612	10/3/08
12 VAC 5-481-460	Repealed	24:18 VA.R. 2607	6/12/08
12 VAC 5-481-470	Amended	24:18 VA.R. 2608	6/12/08
12 VAC 5-481-480	Amended	24:18 VA.R. 2610	6/12/08
12 VAC 5-481-480	Amended	25:2 VA.R. 260	11/1/08
12 VAC 5-481-500	Amended	24:18 VA.R. 2619	6/12/08
12 VAC 5-481-510	Amended	24:18 VA.R. 2620	6/12/08
12 VAC 5-481-530 through 12 VAC 5-481-590	Amended	24:18 VA.R. 2622-2626	6/12/08
12 VAC 5-481-571	Added	24:18 VA.R. 2624	6/12/08
12 VAC 5-481-630 through 12 VAC 5-481-760	Amended	24:18 VA.R. 2626-2629	6/12/08
12 VAC 5-481-780	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-790	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-800	Repealed	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-810 through 12 VAC 5-481-910	Amended	24:18 VA.R. 2630-2631	6/12/08
12 VAC 5-481-930 through 12 VAC 5-481-1050	Amended	24:18 VA.R. 2632-2633	6/12/08
12 VAC 5-481-971	Added	24:18 VA.R. 2632	6/12/08
12 VAC 5-481-1070	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1090	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1100	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1110	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1130	Amended	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1151	Added	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1160	Repealed	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1161	Added	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1190	Amended	24:18 VA.R. 2637	6/12/08
12 VAC 5-481-1200	Amended	24:18 VA.R. 2638	6/12/08
12 VAC 5-481-1220 through 12 VAC 5-481-1250	Amended	24:18 VA.R. 2639-2640	6/12/08
12 VAC 5-481-1270	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1300	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1310	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1320	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1350	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1380	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1420	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1440	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1490	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1520	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1540	Repealed	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1550	Repealed	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1560	Amended	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1570	Amended	24:18 VA.R. 2647	6/12/08
12 VAC 5-481-1670 through 12 VAC 5-481-2040	Amended	24:18 VA.R. 2647-2650	6/12/08
12 VAC 5-481-2001	Added	24:18 VA.R. 2649	6/12/08
12 VAC 5-481-2050	Repealed	24:18 VA.R. 2650	6/12/08
12 VAC 5-481-2060	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2070	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2080	Amended	24:18 VA.R. 2651	6/12/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-2100	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2230	Amended	24:18 VA.R. 2652	6/12/08
12 VAC 5-481-2240	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2260	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2270	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2280	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2330	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2420	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2430	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2470	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2490	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2510	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2530	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2540	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2550	Amended	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2571	Added	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2572	Added	24:18 VA.R. 2659	6/12/08
12 VAC 5-481-2573	Added	24:18 VA.R. 2660	6/12/08
12 VAC 5-481-2660 through 12 VAC 5-481-2950	Amended	24:18 VA.R. 2660-2661	6/12/08
12 VAC 5-481-2870	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-481-2970	Amended	24:18 VA.R. 2661	6/12/08
12 VAC 5-481-2980	Amended	24:18 VA.R. 2662	6/12/08
12 VAC 5-481-3000 through 12 VAC 5-481-3040	Amended	24:18 VA.R. 2663-2665	6/12/08
12 VAC 5-481-3070 through 12 VAC 5-481-3140	Amended	24:18 VA.R. 2667-2670	6/12/08
12 VAC 5-481-3050	Repealed	24:18 VA.R. 2665	6/12/08
12 VAC 5-481-3051	Added	24:18 VA.R. 2666	6/12/08
12 VAC 5-481-3091	Added	24:18 VA.R. 2668	6/12/08
12 VAC 5-481-3151	Added	24:18 VA.R. 2670	6/12/08
12 VAC 5-481-3160	Amended	24:18 VA.R. 2671	6/12/08
12 VAC 5-481-3160	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-481-3200 through 12 VAC 5-481-3270	Amended	24:18 VA.R. 2671-2675	6/12/08
12 VAC 5-481-3241	Added	24:18 VA.R. 2673	6/12/08
12 VAC 5-481-3261	Added	24:18 VA.R. 2674	6/12/08
12 VAC 5-481-3290	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3300	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3340	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3350	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3400	Amended	24:18 VA.R. 2676	6/12/08
12 VAC 5-481-3430	Amended	24:18 VA.R. 2677	6/12/08
12 VAC 5-481-3440	Amended	24:18 VA.R. 2683	6/12/08
12 VAC 5-481-3480	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3490	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3510	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3520	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3530	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3560	Amended	24:18 VA.R. 2686	6/12/08
12 VAC 5-481-3580	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3600	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3610	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3650	Amended	24:18 VA.R. 2688	6/12/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-3670	Repealed	24:18 VA.R. 2689	6/12/08
12 VAC 5-481-3680 through 12 VAC 5-481-3780	Added	24:18 VA.R. 2689-2715	6/12/08
12 VAC 5-481-3710	Amended	25:2 VA.R. 267	11/1/08
12 VAC 30-40-290 emer	Amended	25:1 VA.R. 35	8/27/08-8/26/09
12 VAC 30-50-130 emer	Amended	24:23 VA.R. 3165	7/2/08 - 7/1/09
12 VAC 30-70-221	Amended	24:21 VA.R. 2959	7/23/08
12 VAC 30-70-311	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-321	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-80-30	Erratum	24:17 VA.R. 2473	--
12 VAC 30-80-30	Amended	24:21 VA.R. 2962	7/23/08
12 VAC 30-80-40 emer	Amended	24:25 VA.R. 3617	8/4/08-8/3/09
12 VAC 30-80-75	Added	24:21 VA.R. 2965	7/23/08
12 VAC 30-80-190 emer	Amended	25:1 VA.R. 41	8/27/08-8/26/09
12 VAC 30-90-41	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-100-170	Amended	24:25 VA.R. 3622	10/2/08
12 VAC 30-120-70 emer	Amended	24:23 VA.R. 3168	7/1/08 - 6/30/09
12 VAC 30-120-90 emer	Amended	24:23 VA.R. 3169	7/1/08 - 6/30/09
12 VAC 30-120-100	Amended	24:26 VA.R. 3781	10/15/08
12 VAC 30-120-140 emer	Amended	24:23 VA.R. 3171	7/1/08 - 6/30/09
12 VAC 30-120-211 emer	Amended	24:23 VA.R. 3174	7/1/08 - 6/30/09
12 VAC 30-120-213 emer	Amended	24:23 VA.R. 3177	7/1/08 - 6/30/09
12 VAC 30-120-225 emer	Amended	24:23 VA.R. 3178	7/1/08 - 6/30/09
12 VAC 30-120-229 emer	Amended	24:23 VA.R. 3181	7/1/08 - 6/30/09
12 VAC 30-120-237 emer	Amended	24:23 VA.R. 3182	7/1/08 - 6/30/09
12 VAC 30-120-247 emer	Amended	24:23 VA.R. 3184	7/1/08 - 6/30/09
12 VAC 30-120-700 emer	Amended	24:23 VA.R. 3185	7/1/08 - 6/30/09
12 VAC 30-120-710 emer	Amended	24:23 VA.R. 3189	7/1/08 - 6/30/09
12 VAC 30-120-754 emer	Amended	24:23 VA.R. 3190	7/1/08 - 6/30/09
12 VAC 30-120-758 emer	Amended	24:23 VA.R. 3191	7/1/08 - 6/30/09
12 VAC 30-120-762 emer	Amended	24:23 VA.R. 3192	7/1/08 - 6/30/09
12 VAC 30-120-770 emer	Amended	24:23 VA.R. 3193	7/1/08 - 6/30/09
12 VAC 30-120-900 emer	Amended	24:23 VA.R. 3195	7/1/08 - 6/30/09
12 VAC 30-120-910 emer	Amended	24:23 VA.R. 3197	7/1/08 - 6/30/09
12 VAC 30-120-920 emer	Amended	24:23 VA.R. 3198	7/1/08 - 6/30/09
12 VAC 30-120-970 emer	Amended	24:23 VA.R. 3200	7/1/08 - 6/30/09
12 VAC 30-120-1500 emer	Amended	24:23 VA.R. 3202	7/1/08 - 6/30/09
12 VAC 30-120-1550 emer	Amended	24:23 VA.R. 3204	7/1/08 - 6/30/09
12 VAC 30-120-2000 emer	Added	24:23 VA.R. 3206	7/1/08 - 6/30/09
12 VAC 30-120-2010 emer	Added	24:23 VA.R. 3207	7/1/08 - 6/30/09
12 VAC 30-135-10	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-20	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-30	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-40	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-70	Amended	24:26 VA.R. 3784	10/16/08
12 VAC 35-11-10 through 12 VAC 35-11-110	Repealed	25:2 VA.R. 271	10/29/08
12 VAC 35-12-10 through 12 VAC 35-12-110	Added	25:2 VA.R. 271-274	10/29/08
12 VAC 35-105-115	Added	24:11 VA.R. 1372	3/5/08
<b>Title 13. Housing</b>			
13 VAC 5-21-10	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-20	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-31	Amended	24:14 VA.R. 1895	5/1/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-21-41	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-45	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-51	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-61	Amended	24:14 VA.R. 1896	5/1/08
13 VAC 5-31-20 through 13 VAC 5-31-50	Amended	24:14 VA.R. 1897-1898	5/1/08
13 VAC 5-31-70 through 13 VAC 5-31-170	Repealed	24:14 VA.R. 1898-1903	5/1/08
13 VAC 5-31-75	Added	24:14 VA.R. 1898	5/1/08
13 VAC 5-31-85	Added	24:14 VA.R. 1900	5/1/08
13 VAC 5-31-200	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-210	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-215 through 13 VAC 5-31-270	Added	24:14 VA.R. 1904-1905	5/1/08
13 VAC 5-51-21 through 13 VAC 5-51-51	Amended	24:14 VA.R. 1907-1910	5/1/08
13 VAC 5-51-81	Amended	24:14 VA.R. 1910	5/1/08
13 VAC 5-51-81	Amended	24:25 VA.R. 3622	10/1/08
13 VAC 5-51-85	Amended	24:14 VA.R. 1921	5/1/08
13 VAC 5-51-91	Amended	24:14 VA.R. 1924	5/1/08
13 VAC 5-51-130 through 13 VAC 5-51-135	Amended	24:14 VA.R. 1925-1928	5/1/08
13 VAC 5-51-143	Added	24:14 VA.R. 1928	5/1/08
13 VAC 5-51-145	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-150	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-152	Repealed	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-154	Amended	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-155	Amended	24:14 VA.R. 1939	5/1/08
13 VAC 5-63-10 through 13 VAC 5-63-50	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-70	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-80	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-100 through 13 VAC 5-63-130	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-150	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-160	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-190 through 13 VAC 5-63-260	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-225	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-265	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-267	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-270	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-280	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-300 through 13 VAC 5-63-360	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-335	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-400	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-430	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-432	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-434 through 13 VAC 5-63-450	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-470 through 13 VAC 5-63-500	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-520	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-525	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-550	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-91-20	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-100	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-110	Repealed	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-115	Added	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-120	Amended	24:14 VA.R. 1944	5/1/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-91-160	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-91-270	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-95-10	Amended	24:14 VA.R. 1947	5/1/08
13 VAC 5-95-30	Amended	24:14 VA.R. 1948	5/1/08
13 VAC 5-112-340	Amended	24:8 VA.R. 979	1/23/08
13 VAC 5-200-10	Amended	24:26 VA.R. 3784	10/1/08
13 VAC 5-200-40 through 13 VAC 5-200-80	Amended	24:26 VA.R. 3784-3785	10/1/08
13 VAC 5-200-100	Amended	24:26 VA.R. 3785	10/1/08
13 VAC 10-180-10	Amended	24:11 VA.R. 1373	2/4/08
13 VAC 10-180-50	Amended	24:11 VA.R. 1374	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1376	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1387	2/4/08
13 VAC 10-180-100	Amended	24:11 VA.R. 1397	2/4/08
<b>Title 14. Insurance</b>			
14 VAC 5-30-30	Amended	24:15 VA.R. 2153	4/1/08
14 VAC 5-200-185	Amended	24:15 VA.R. 2155	4/1/08
14 VAC 5-211-50	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-90	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-100	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-215 (Forms)	Amended	24:17 VA.R. 2452	--
14 VAC 5-270-10 through 14 VAC 5-270-150	Amended	24:12 VA.R. 1460-1470	1/1/10
14 VAC 5-270-144	Added	24:12 VA.R. 1467	1/1/10
14 VAC 5-270-146	Added	24:12 VA.R. 1468	1/1/10
14 VAC 5-270-148	Added	24:12 VA.R. 1469	1/1/10
14 VAC 5-270-170	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-174	Added	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-180	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-395-40	Amended	24:26 VA.R. 3811	8/29/08
<b>Title 15. Judicial</b>			
15 VAC 5-80-50	Amended	24:23 VA.R. 3211	7/1/08
<b>Title 16. Labor and Employment</b>			
16 VAC 15-21-30	Amended	24:23 VA.R. 3213	8/21/08
16 VAC 15-30-40	Amended	24:25 VA.R. 3632	9/18/08
16 VAC 15-30-190	Amended	24:23 VA.R. 3214	8/21/08
16 VAC 20-20-20	Amended	24:22 VA.R. 3065	8/7/08
16 VAC 20-20-40	Amended	24:22 VA.R. 3066	8/7/08
16 VAC 20-20-50	Amended	24:22 VA.R. 3068	8/7/08
16 VAC 20-20-60	Amended	24:22 VA.R. 3069	8/7/08
16 VAC 20-20-80	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 20-20-110	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 25-10-10 through 16 VAC 25-10-120	Repealed	24:26 VA.R. 3811	10/1/08
16 VAC 25-11-10 through 16 VAC 25-11-110	Added	24:26 VA.R. 3811-3814	10/1/08
16 VAC 25-90-1910.6	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.68	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.94	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.103	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.107	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.110	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.111	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.132	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-90-1910.144	Added	24:16 VA.R. 2262	6/1/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-90-1910.243	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.251	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.253	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.261	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-100-1915.152	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-120-1917.96	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-130-1918.106	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-175-1926.95	Added	24:16 VA.R. 2263	6/1/08
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 15-10-10 through 18 VAC 15-10-90	Repealed	25:1 VA.R. 55	10/15/08
18 VAC 15-11-10 through 18 VAC 15-11-110	Added	25:1 VA.R. 55-58	10/15/08
18 VAC 15-20-451	Amended	24:17 VA.R. 2455	8/1/08
18 VAC 30-20 (Forms)	Amended	24:26 VA.R. 3814	--
18 VAC 30-20-80	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-170	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-171	Amended	24:10 VA.R. 1285	2/20/08
18 VAC 45-10-10 through 18 VAC 45- 10-90	Repealed	24:26 VA.R. 3815	10/2/08
18 VAC 45-11-10 through 18 VAC 45-11-110	Added	24:26 VA.R. 3815-3818	10/2/08
18 VAC 60-20 (Forms)	Amended	25:1 VA.R. 58	--
18 VAC 60-20-30	Amended	24:20 VA.R. 2874	7/24/08
18 VAC 60-20-81	Added	24:14 VA.R. 1949	4/16/08
18 VAC 60-20-108	Amended	24:14 VA.R. 1950	4/16/08
18 VAC 60-20-190	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 60-20-220	Amended	24:10 VA.R. 1287	3/10/08
18 VAC 60-20-220	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 65-10-10 through 18 VAC 65-10-120	Repealed	25:2 VA.R. 291	10/29/08
18 VAC 65-11-10 through 18 VAC 65-11-110	Added	25:2 VA.R. 291-294	10/29/08
18 VAC 65-20 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 65-20-10	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-15	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-60	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-120	Amended	24:24 VA.R. 3358	9/3/08
18 VAC 65-20-130	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-151	Amended	24:22 VA.R. 3070	8/6/08
18 VAC 65-20-153	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-170	Amended	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-171	Added	24:24 VA.R. 3359	9/3/08
18 VAC 65-20-240	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-350	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-420	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-440	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-500	Amended	24:24 VA.R. 3360	9/3/08
18 VAC 65-20-510	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-20-590	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-20-700	Amended	24:24 VA.R. 3361	9/3/08
18 VAC 65-40 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 75-10-10 through 18 VAC 75-10-120	Repealed	25:2 VA.R. 294	10/29/08
18 VAC 75-11-10 through 18 VAC 75-11-110	Added	25:2 VA.R. 295-297	10/29/08
18 VAC 75-20 (Forms)	Amended	24:25 VA.R. 3632	--
18 VAC 76-20 (Forms)	Amended	24:26 VA.R. 3819	--

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 76-30-10 through 18 VAC 76-30-120	Repealed	24:25 VA.R. 3632	9/17/08
18 VAC 76-31-10 through 18 VAC 76-31-110	Added	24:25 VA.R. 3633-3635	9/17/08
18 VAC 76-40 (Forms)	Amended	24:26 VA.R. 3820	--
18 VAC 85-10-10 through 18 VAC 85-10-110	Repealed	24:26 VA.R. 3820	10/1/08
18 VAC 85-11-10 through 18 VAC 85-11-110	Added	24:26 VA.R. 3820	10/1/08
18 VAC 85-20 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-20-22	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-22	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 85-20-225	Amended	24:24 VA.R. 3367	9/3/08
18 VAC 85-20-226	Added	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-400	Amended	24:20 VA.R. 2876	7/24/08
18 VAC 85-40 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-40-35	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-40-55	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-40-67	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-50 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-50-35	Amended	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-59	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-50-61	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-80 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-80-26	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-80-65	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-80-73	Added	24:11 VA.R. 1406	3/5/08
18 VAC 85-101 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-101-25	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-25	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-40	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-50	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-55	Added	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-60	Amended	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-70	Repealed	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-145	Amended	24:24 VA.R. 3368	9/3/08
18 VAC 85-101-150	Amended	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-153	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-110 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-110-35	Amended	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-145	Amended	24:24 VA.R. 3369	9/3/08
18 VAC 85-110-161	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-120 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-120-10	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-50	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-70	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-85	Amended	24:24 VA.R. 3369	9/3/08
18 VAC 85-120-90	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-95	Added	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-150	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-130 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-130-30	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 90-10-10 through 18 VAC 90-10-120	Repealed	24:25 VA.R. 3635	9/17/08
18 VAC 90-11-10 through 18 VAC 90-11-110	Added	24:25 VA.R. 3636-3639	9/17/08
18 VAC 90-20 (Forms)	Amended	25:1 VA.R. 59	--

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 90-20-10	Amended	24:13 VA.R. 1842	4/2/08
18 VAC 90-20-35	Amended	24:13 VA.R. 1843	4/2/08
18 VAC 90-20-40 through 18 VAC 90-20-60	Amended	24:13 VA.R. 1843-1845	4/2/08
18 VAC 90-20-65	Repealed	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-70	Amended	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-90	Amended	24:13 VA.R. 1845	4/2/08
18 VAC 90-20-95	Amended	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-96	Added	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-110 through 18 VAC 90-20-140	Amended	24:13 VA.R. 1846-1848	4/2/08
18 VAC 90-20-151	Added	24:13 VA.R. 1848	4/2/08
18 VAC 90-20-160	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-190	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-200	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-220	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-230	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-271	Amended	24:21 VA.R. 2969	7/23/08
18 VAC 90-20-275	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-280	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-300	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-370	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-390	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-410	Amended	24:13 VA.R. 1853	4/2/08
18 VAC 90-25 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30-10	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-80	Erratum	24:18 VA.R. 2731-2732	--
18 VAC 90-30-80	Amended	24:24 VA.R. 3369	9/3/08
18 VAC 90-30-120	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-121	Added	24:10 VA.R. 1289	2/20/08
18 VAC 90-30-160	Amended	24:24 VA.R. 3370	9/3/08
18 VAC 90-40 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-50 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-60 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-60-110	Amended	24:23 VA.R. 3216	9/4/08
18 VAC 95-20 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 95-20-80	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-20-175	Amended	24:20 VA.R. 2887	7/24/08
18 VAC 95-20-220	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-20-230	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-30 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 95-30-40	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-30-95	Amended	24:23 VA.R. 3219	9/4/08
18 VAC 95-30-150	Amended	24:23 VA.R. 3220	9/4/08
18 VAC 95-30-180	Amended	24:23 VA.R. 3220	9/4/08
18 VAC 105-10-10 through 18 VAC 105-10-120	Repealed	24:26 VA.R. 3828	10/1/08
18 VAC 105-11-10 through 18 VAC 105-11-110	Added	24:26 VA.R. 3828-3831	10/1/08
18 VAC 105-20 (Forms)	Amended	24:25 VA.R. 3639	--
18 VAC 105-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-10-10 through 18 VAC 110-10-120	Repealed	25:2 VA.R. 298	10/29/08
18 VAC 110-11-10 through 18 VAC 110-11-110	Added	25:2 VA.R. 298-301	10/29/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 110-20 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-75	Amended	24:22 VA.R. 3071	8/6/08
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 110-20-530	Amended	24:16 VA.R. 2265	5/14/08
18 VAC 110-30 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-30-15	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-50-10	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-160	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-170	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-180	Added	24:10 VA.R. 1292	2/20/08
18 VAC 110-50-190	Added	24:10 VA.R. 1292	2/20/08
18 VAC 112-10-10 through 18 VAC 112-10-120	Repealed	25:1 VA.R. 61	10/15/08
18 VAC 112-11-10 through 18 VAC 112-11-110	Added	25:1 VA.R. 62-64	10/15/08
18 VAC 112-20 (Forms)	Amended	24:26 VA.R. 3831	--
18 VAC 115-10-10 through 18 VAC 115-10-120	Repealed	24:26 VA.R. 3832	10/1/08
18 VAC 115-11-10 through 18 VAC 115-11-110	Added	24:26 VA.R. 3832-3835	10/1/08
18 VAC 115-20 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-20-10	Amended	24:24 VA.R. 3387	9/3/08
18 VAC 115-20-45	Amended	24:24 VA.R. 3387	9/3/08
18 VAC 115-20-49	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-51	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-52	Amended	24:24 VA.R. 3388	9/3/08
18 VAC 115-20-120	Repealed	24:24 VA.R. 3390	9/3/08
18 VAC 115-30 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-30-150	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-30-160	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-40 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-50 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-50-10	Amended	24:24 VA.R. 3390	9/3/08
18 VAC 115-50-40	Amended	24:24 VA.R. 3390	9/3/08
18 VAC 115-50-55	Amended	24:24 VA.R. 3391	9/3/08
18 VAC 115-50-60	Amended	24:24 VA.R. 3391	9/3/08
18 VAC 115-60 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-60-10	Amended	24:24 VA.R. 3392	9/3/08
18 VAC 115-60-50	Amended	24:24 VA.R. 3393	9/3/08
18 VAC 115-60-70	Amended	24:24 VA.R. 3393	9/3/08
18 VAC 115-60-80	Amended	24:24 VA.R. 3394	9/3/08
18 VAC 120-10-100 through 18 VAC 120-10-180	Repealed	24:26 VA.R. 3835	10/2/08
18 VAC 120-11-10 through 18 VAC 120-11-110	Added	24:26 VA.R. 3836-3838	10/2/08
18 VAC 125-20 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 125-20-170	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 125-30 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 125-30-120	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 130-20-10	Amended	24:23 VA.R. 3225	9/1/08
18 VAC 130-20-70	Amended	24:23 VA.R. 3229	9/1/08
18 VAC 130-20-180	Amended	24:23 VA.R. 3229	9/1/08
18 VAC 130-20-200	Amended	24:23 VA.R. 3231	9/1/08
18 VAC 130-20-230	Amended	24:23 VA.R. 3231	9/1/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 135-20-10	Amended	24:11 VA.R. 1408	4/1/08
18 VAC 135-20-30	Amended	24:11 VA.R. 1409	4/1/08
18 VAC 135-20-60	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-100	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-101	Added	24:11 VA.R. 1412	4/1/08
18 VAC 135-20-105	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-160	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-170	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-180	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-190	Amended	24:11 VA.R. 1416	4/1/08
18 VAC 135-20-210	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-220	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-280	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-300	Amended	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-345	Added	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-360	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-370	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-390	Amended	24:11 VA.R. 1420	4/1/08
18 VAC 135-60-60	Amended	24:9 VA.R. 1230	3/1/08
18 VAC 140-10-10 through 18 VAC 140-10-120	Repealed	24:25 VA.R. 3641	9/17/08
18 VAC 140-11-10 through 18 VAC 140-11-110	Added	24:25 VA.R. 3641-3644	9/17/08
18 VAC 140-20 (Forms)	Amended	25:1 VA.R. 67	--
18 VAC 140-20-50	Amended	24:23 VA.R. 3234	9/4/08
18 VAC 140-20-70	Amended	24:23 VA.R. 3235	9/4/08
18 VAC 140-20-105	Amended	24:20 VA.R. 2890	7/24/08
18 VAC 150-10-10 through 18 VAC 150-10-120	Repealed	25:1 VA.R. 68	10/15/08
18 VAC 150-11-10 through 18 VAC 150-11-110	Added	25:1 VA.R. 68-71	10/15/08
18 VAC 150-20 (Forms)	Amended	24:26 VA.R. 3838	--
18 VAC 150-20-135	Amended	24:21 VA.R. 2969	7/23/08
<b>Title 19. Public Safety</b>			
19 VAC 30-10-10 through 19 VAC 30-10-40	Repealed	24:26 VA.R. 3839	10/1/08
19 VAC 30-11-10 through 19 VAC 30-11-110	Added	24:26 VA.R. 3839-3842	10/1/08
19 VAC 30-20-115	Added	24:11 VA.R. 1421	3/6/08
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 30-190-10 through 19 VAC 30-190-140	Added	24:11 VA.R. 1421-1423	3/6/08
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-315-10	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-20	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-40	Amended	24:26 VA.R. 3846	8/25/08
20 VAC 5-315-50	Amended	24:26 VA.R. 3847	8/25/08
<b>Title 21. Securities and Retail Franchising</b>			

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
21 VAC 5-20-280	Amended	24:21 VA.R. 2971	7/1/08
21 VAC 5-80-10	Amended	24:21 VA.R. 2976	7/1/08
21 VAC 5-80-200	Amended	24:21 VA.R. 2977	7/1/08
21 VAC 5-110-10	Amended	24:21 VA.R. 2983	7/1/08
21 VAC 5-110-20	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-30	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-40	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-50	Amended	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-55	Added	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-60	Amended	24:21 VA.R. 2986	7/1/08
21 VAC 5-110-65	Amended	24:21 VA.R. 2987	7/1/08
21 VAC 5-110-70	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-75	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-80	Amended	24:21 VA.R. 2989	7/1/08
21 VAC 5-110-90	Repealed	24:21 VA.R. 2992	7/1/08
21 VAC 5-110-95	Added	24:21 VA.R. 2992	7/1/08
<b>Title 22. Social Services</b>			
22 VAC 5-30-10 through 22 VAC 5-30-60	Added	24:25 VA.R. 3665-3669	1/1/09
22 VAC 15-30-310	Amended	24:10 VA.R. 1295	3/6/08
22 VAC 30-10-10	Amended	24:22 VA.R. 3076	8/8/08
22 VAC 30-10-10	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-20	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-20	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-40	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-40	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-50	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-50	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-60	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-11-10 through 22 VAC 30-11-110	Added	25:1 VA.R. 72-74	10/15/08
22 VAC 40-11-10 through 22 VAC 40-11-70	Repealed	25:1 VA.R. 74	1/1/09
22 VAC 40-12-10 through 22 VAC 40-12-110	Added	25:1 VA.R. 74-78	1/1/09
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 40-690-20	Amended	24:24 VA.R. 3420	10/1/08
22 VAC 40-690-30	Amended	24:24 VA.R. 3420	10/1/08
22 VAC 40-690-40	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-690-55	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-690-65	Amended	24:24 VA.R. 3421	10/1/08
22 VAC 40-705-10 emer	Amended	24:14 VA.R. 1987	3/1/08-2/28/09
22 VAC 40-705-30 emer	Amended	24:14 VA.R. 1990	3/1/08-2/28/09
<b>Title 23. Taxation</b>			
23 VAC 10-10-10 through 23 VAC 10-10-80	Amended	24:12 VA.R. 1520-1521	4/19/08
23 VAC 10-10-80	Amended	24:12 VA.R. 1521	4/19/08
23 VAC 10-10-90	Repealed	24:12 VA.R. 1522	4/19/08
23 VAC 10-20-155	Added	24:26 VA.R. 3848	10/1/08
23 VAC 10-210-20	Repealed	24:26 VA.R. 3849	10/1/08
23 VAC 10-210-693	Amended	24:23 VA.R. 3240	10/6/08
23 VAC 10-500-10 through 23 VAC 10-500-820	Added	24:23 VA.R. 3253-3289	10/6/08
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 27-30-10 through 24 VAC 27-30-190	Added	25:1 VA.R. 78-89	10/15/08
24 VAC 30-72-10 through 24 VAC 30-72-170	Added	24:17 VA.R. 2458-2466	7/1/08

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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 30-72-30	Erratum	24:18 VA.R. 2732	--
24 VAC 30-155-10	Amended	24:23 VA.R. 3290	7/1/08
24 VAC 30-155-40	Amended	24:23 VA.R. 3291	7/1/08
24 VAC 30-155-50	Amended	24:23 VA.R. 3292	7/1/08
24 VAC 30-155-60	Amended	24:23 VA.R. 3294	7/1/08
24 VAC 30-155-70	Amended	24:23 VA.R. 3303	7/1/08
24 VAC 30-155-80	Amended	24:23 VA.R. 3303	7/1/08

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

#### Agency Decision

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

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

Name of Petitioner: Len Futerman.

Nature of Petitioner's Request: To establish a registration process for those qualified to administer sedation and anesthesia.

Agency's Decision: Request denied.

Statement of Reasons for Decision: The board is advised by Counsel that it does not have statutory authority to establish registration and issue permits for administration of anesthesia and sedation.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R08-21; Filed September 12, 2008, 2:29 p.m.

#### Agency Decision

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

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

Name of Petitioner: Dr. Robert G. Sotack.

Nature of Petitioner's Request: To create a dental retirement license at no charge.

Agency's Decision: Request denied.

Statement of Reasons for Decision: Licensees of the board may allow a license to lapse or may choose to hold an inactive license or apply for a restricted volunteer license; the board did not choose to establish another category of licensure at no cost.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R08-26; Filed September 12, 2008, 2:29 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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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 repealing the following regulations: **8VAC20-370, Rules Governing Fees and Charges** and promulgating **8VAC20-720, Regulations Governing Local School Boards and School Divisions**. The purpose of the proposed action is to repeal current regulations governing fees and charges and create a new regulation that will contain specific provisions regarding permissible fees, impermissible fees, policies for families that cannot afford the fees, and permissible and impermissible actions for the failure to pay the fees.

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

Statutory Authority: §§22.1-16 and 22.1-321 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on November 14, 2008.

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

VA.R. Doc. No. R09-1531; Filed September 24, 2008, 9:54 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 Education intends to consider repealing the following regulations: **8VAC20-670, Regulations Governing the Operation of Private Day Schools for Students with Disabilities**, and promulgating **8VAC20-671, Regulations Governing the Operation of Private Day Schools for Students with Disabilities and Educational Programs Offered in Group Homes and Residential Facilities in the Commonwealth**. Effective October 31, 2009, the provisions of the Code of Virginia are revised pursuant to legislation passed by the 2008 Acts of Assembly and signed by the Governor. The legislation eliminated the interdepartmental regulation of children's residential facilities. Thus, new regulations are needed to govern the operation of educational programs and services in children's residential facilities and group homes. The new regulations will provide provisions for the operation of schools for students with disabilities and hold all private providers of special education to consistent standards. The new regulations will allow consistency in the operation and management of these education programs.

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

Statutory Authority: §§22.1-16 and 22.1-321 of Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on November 14, 2008.

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

VA.R. Doc. No. R09-1552; Filed September 24, 2008, 9:50 a.m.

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### 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 Health intends to consider repealing the following regulations: **12VAC5-610, Sewage Handling and Disposal Regulations** and promulgating **12VAC5-611, Onsite Sewage Regulations**. The purpose of the proposed action is to adopt new performance-based regulations pertaining to locating, designing, constructing and operating onsite sewage systems and repeal existing regulations.

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

Statutory Authority: §§32.1-12 and 32.1-164 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on November 12, 2008.

Agency Contact: Donald Alexander, Director, Division of Sewage and Water Services, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7473, FAX (804) 864-7475, or email [don.alexander@vdh.virginia.gov](mailto:don.alexander@vdh.virginia.gov).

VA.R. Doc. No. R09-1634; Filed September 23, 2008, 10:03 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 Health intends to consider amending the following regulations: **12VAC5-590, Waterworks Regulations**. The purpose of the proposed action is to provide additional enforcement tools for addressing chronically noncompliant waterworks.

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# Notices of Intended Regulatory Action

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

Statutory Authority: §§32.1-12 and 32.1-170 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on November 12, 2008.

Agency Contact: Robert A. K. Payne, Compliance Manager, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7498, or email [rob.payne@vdh.virginia.gov](mailto:rob.payne@vdh.virginia.gov).

VA.R. Doc. No. R09-1136; Filed September 19, 2008, 10:16 a.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-80, Methods and Standards for Establishing Payment Rate; Other Types of Care.** The purpose of the proposed action is to implement reimbursement changes for Ambulatory Surgery Centers (ASCs). The Centers for Medicare and Medicaid Services (CMS) implemented a new reimbursement system for ASCs in calendar year 2007. This action will also implement reimbursement changes for outpatient rehabilitation facilities that are currently reimbursed on a cost basis.

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

Statutory Authority: §§32.1-324 and 32.1-325 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on November 12, 2008.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email [brian.mccormick@dmas.virginia.gov](mailto:brian.mccormick@dmas.virginia.gov).

VA.R. Doc. No. R09-1405; Filed September 24, 2008, 10:27 a.m.

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## TITLE 13. HOUSING

### VIRGINIA MANUFACTURED HOUSING BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Manufactured Housing Board intends to consider amending the following regulations:

**13VAC6-20, Manufactured Housing Licensing and Transaction Recovery Fund Regulations.** The purpose of the proposed action is to bring the regulation into compliance with 2008 legislation; assess adequacy of licensure fees; delete and add text based on recommendations from the Office of Attorney General; and clarify application of regulations for claims against the regulants.

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

Statutory Authority: §36-85.18 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on November 12, 2008.

Agency Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, or email [steve.calhoun@dhcd.virginia.gov](mailto:steve.calhoun@dhcd.virginia.gov).

VA.R. Doc. No. R09-1572; Filed September 23, 2008, 11:11 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board of Dentistry intends to consider amending the following regulations: **18VAC60-20, Virginia Board of Dentistry Regulations.** The purpose of the proposed action is to promulgate regulations for registration of dental assistants II as required by Chapters 84 and 264 of the 2008 Acts of Assembly.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on November 12, 2008.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 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).

VA.R. Doc. No. R09-1526; Filed September 23, 2008, 11:03 a.m.

## BOARD OF PHARMACY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending the following regulations: **18VAC110-20, Virginia Board of Pharmacy Regulations**. The purpose of the proposed action is to set the renewal dates in regulation as prescribed in Chapter 330 of the 2008 Acts of Assembly.

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

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

Public comments: Public comments may be submitted until 5 p.m. on November 12, 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](mailto:scotti.russell@dhp.virginia.gov).

VA.R. Doc. No. R09-1311; Filed September 23, 2008, 1:34 p.m.



## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the State Board of Social Services has WITHDRAWN the Notice of Intended Regulatory Action for **22VAC44-35, Virginia Independence Program**, which was published in 22:26 VA. R 3992 September 4, 2006. The intent of the notice of intended regulatory action was accomplished with the adoption of an exempt final regulation that was approved by the State Board of Social Services on June 20, 2007, and was published in the Virginia Register on July 23, 2007.

Contact: Richard Martin, Department of Social Services, 7 N. 8th Street, Richmond, VA 23219, telephone (804) 726-7902, FAX (804) 726-7906, or email [richard.martin@dss.virginia.gov](mailto:richard.martin@dss.virginia.gov)

VA.R. Doc. No. R06-328; Filed September 24, 2008,

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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 1. ADMINISTRATION

### DEPARTMENT OF GENERAL SERVICES

#### Notice of Suspension of Regulatory Process

Titles of Regulations: **1VAC30-45. Certification for Noncommercial Environmental Laboratories.**

**1VAC30-46. Accreditation for Commercial Environmental.**

Statutory Authority: §2.2-1105 of the Code of Virginia.

Publication of final regulations: 24:25 VA.R. 3449-3523 August 18, 2008.

Suspension of final stage: The final stage of the regulatory process was suspended on Wednesday, September 17, 2008, pursuant to §2.2-4007.06 of the Code of Virginia. The reason for the suspension is that at least 25 persons requested additional public comment.

Delay of effective date: The effective date of this regulatory action will be delayed.

Additional public comment: The Division of Consolidated Laboratory Services of the Department of General Services (DGS-DCLS) will hold a 30-day public comment period on the issues raised by those who requested additional public comment. A summary of these issues is provided below. DGS-DCLS will only take comments on the issues that were raised and the specific regulatory provisions set out below.

DGS-DCLS will receive public comments until 5 p.m. on November 12, 2008. DGS-DCLS will not hold a public hearing. Comments may be sent by email or letter to the contact listed below. Any comment sent by email must include the name, address, and phone number of the person sending the comment.

Contact person: Nancy S. Saylor, Consultant to the Division of Consolidated Laboratory Services, Department of General Services, 600 North 5<sup>th</sup> Street, Richmond, VA, 23219, telephone (804) 231-7980, email nssaylor@verizon.net.

Summary of issues raised by those persons requesting additional public comment: Citizen water quality monitoring groups have two main concerns. First, fees charged under the environmental laboratory certification program will severely affect the ability of citizen monitoring groups to continue operation. Citizen monitoring groups are funded through grants from the Department of Environmental Quality (DEQ). Grant money is limited. If citizen monitoring groups are

charged fees, this grant money will be diverted to DCLS and not used for its intended purpose, to fund the operation of these groups. Second, the final regulations do not take into account the recent changes DEQ has made to its citizen water quality monitoring program. This leads to a conflict between the certification program and the citizen monitoring program. Since 2004, DEQ has developed a three-tiered system to define how the agency will use citizen monitoring data. DEQ has assigned quality assurance and quality control (QA/QC) requirements for each of the tiers. DEQ has approved many QA/QC plans developed by citizen monitoring groups during this time.

Environmental research laboratories at Virginia's institutions of higher education also raised concerns. First, the impacts of the regulations on research conducted by these laboratories are unclear because the regulations do not specifically address whether these laboratories would be commercial or noncommercial. One commenter from a university laboratory stated that the laboratory performs both research and permit monitoring analysis. Second, these laboratories are concerned about the fees and other costs of the certification program. These costs could have an adverse impact on the operation of the laboratories. Third, providing research analysis to DEQ is different than submitting data for the purpose of complying with a permit. Laboratories providing research analysis should not be subject to the same requirements as those submitting compliance data.

Background: The regulations establish the certification program required by §2.2-1105 of the Code of Virginia for environmental laboratories submitting data to the Department of Environmental Quality under the state's air, water and waste laws. There are two regulations, one for noncommercial environmental laboratories (1VAC30-45) and one for commercial environmental laboratories (1VAC30-46). Each regulation is organized into two parts. Part I of each regulation contains the provisions pertaining to the administration of the program. This part describes the process that owners of environmental laboratories must use to be certified and to maintain certification under the program. Part II of each regulation contains the quality assurance and quality control standards that environmental laboratories must meet to be certified under the program. The standards in Part II of Chapter 45 have been developed for Virginia noncommercial environmental laboratories. The standards in Part II of Chapter 46 are the 2003 National Environmental Laboratory Accreditation Conference standards, which are incorporated by reference into the regulation.

The regulations were first proposed in February 2004. DGS-DCLS took written comments for 60 days. DGS-DCLS also held public hearings statewide to hear public comments. At the end of the 60-day public comment period, DGS-DCLS reviewed the public comments and revised the regulations. Because some of the revisions were significant, DGS-DCLS announced an additional 30-day public comment period in September 2004. Following this public comment period, DGS-DCLS made additional changes to the regulations. One of these changes was the elimination from the definition of environmental analysis and from the program requirements of taxonomic identification of samples for which there is no national accreditation standard such as algae or benthic macroinvertebrates. This change was made in response to comments from citizen monitoring groups who commented during the second public comment period, for the first time. DGS-DCLS sent the draft final regulation package for review to the Department of Planning and Budget, the Secretary of Administration, and the Governor's Policy Office, in March 2005. This executive review was ongoing until July 10, 2008, when the Governor's Office approved the final regulations to be promulgated in the Virginia Register.

Provisions to be added to 1VAC30-45-30: DGS-DCLS and DEQ have been working together to draft regulatory provisions that address the issues raised by both citizen monitoring groups and laboratories at institutions of higher education. These proposed new provisions are set out below. DGS-DCLS requests comments on the specific language of 1VAC30-45-30 C and D. 1VAC30-45-30 is provided in its entirety. Please comment only on the proposed additional language, which is underlined.

The citizen water quality monitoring program at DEQ has grown since 2004, when DEQ and DGS-DCLS last discussed how the certification program would affect citizen monitoring groups. At that time, seven laboratories were affected and only three of these laboratories would incur significant fees. The program to use citizen monitors was at the beginning of its development. Since 2004, Virginia's General Assembly and the Environmental Protection Agency (EPA) have encouraged DEQ to increase its use of citizen monitors of the state's waters. Since 2004, DEQ has created a program that provides separate tiers for different levels of citizen monitoring data usage. As the significance of the data use increases, the requirements for quality assurance and quality control increase. For Tier III, the highest tier, where data are used to list or delist waters on the 303(d) impaired water list, to assess waters for the 305(b) report to EPA, or to use with DEQ data for TMDL development, DEQ requires a quality assurance project plan, laboratory audit, and the submittal of calibration and quality control associated information to DEQ when submitting data. DGS-DCLS and DEQ are proposing (see 1VAC30-45-30 C) to allow citizen monitoring groups and certain affiliated environmental laboratories to meet DEQ's quality assurance and quality control requirements in

lieu of the requirements of the certification program. DGS-DCLS sees no need to override the working quality assurance program that DEQ has developed for citizen monitoring groups. In addition, these groups have limited funds. Any increase in costs would hamper their ability to provide data to DEQ.

DEQ works with many environmental laboratories at institutions of higher education on various research projects that provide information on the environmental health of the state's waters. Some examples are fish health studies that analyze blood chemistry and organ condition; water quality studies focusing on storm-event patterns to assess metals, pesticides, and organics; benthic biomonitoring; and an assessment of chemistry from fish kill vs. nonfish kill areas. Most of these laboratories only perform research analyses. Some of the laboratories eventually provide analyses that support water standards development or that may be associated with permitting. DEQ proposes to identify and require these laboratories to be certified (see 1VAC30-45-30 D).

DEQ believes that analyses performed by laboratories at institutions of higher education that are used by DEQ and are directly associated with DEQ regulations, permits, compliance and/or enforcement activities must be certified by DGS-DCLS. Analyses performed by laboratories at institutions of higher education and used by DEQ as environmental research do not require certification.

DGS-DCLS and DEQ will treat environmental laboratories at institutions of higher education that perform environmental analysis required by permits or compliance orders for themselves or for others just as they would laboratories owned commercially or by local governments or authorities. If the laboratory does work for other persons, the laboratory would be deemed a commercial laboratory under 1VAC30-46. If the laboratory does work for the institution of higher education of which it is a part, the laboratory would be deemed a noncommercial laboratory and be subject to 1VAC30-45. If the laboratory is a state institution of higher education and works for another state agency, the laboratory would be deemed noncommercial.

#### Regulatory provisions for review:

##### **1VAC30-45-30. Applicability.**

A. This chapter applies to any owner of a noncommercial environmental laboratory.

B. Any environmental laboratory owned by an agency of the federal government may be certified as follows:

1. By DGS-DCLS to the standards set out in this chapter, or

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# Regulations

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2. By a federal primary accrediting authority to the standards established by the National Environmental Laboratory Accreditation Conference.

C. Citizen monitoring groups. Section 62.1-44.19:11 of the Code of Virginia both establishes a citizen water quality monitoring program for Virginia and encourages the growth of the program. The Department of Environmental Quality (DEQ) has a separate program of quality assurance and quality control (QA/QC) standards for citizen monitoring groups and their laboratories to follow. The following laboratories shall meet the DEQ QA/QC requirements developed for the purposes of citizen monitoring of water quality in lieu of the requirements of 1VAC30, Chapter 45 or 1VAC30, Chapter 46:

1. Laboratories owned by citizen monitoring groups.
2. Laboratories at institutions of higher education affiliated with citizen monitoring groups for the purposes of analyzing samples for the groups.

D. Environmental research performed by environmental laboratories owned by institutions of higher education. Environmental laboratories owned by institutions of higher education located in Virginia that perform analyses for the purpose of providing environmental research data to DEQ at DEQ's request shall meet the QA/QC requirements specified by DEQ. An environmental laboratory owned by an institution of higher education located in Virginia that performs environmental research for DEQ shall not be subject to the requirements of either 1VAC30, Chapter 45 or 1VAC30, Chapter 46 unless DEQ requires the laboratory to do so.

VA.R. Doc. No. R98-312; Filed September 17, 2008, 10:21 a.m.



## TITLE 2. AGRICULTURE

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Final Regulation

<p><u>REGISTRAR'S NOTICE:</u> The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.</p>
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Titles of Regulations: **2VAC5-10. Public Participation Guidelines (repealing 2VAC5-10-10 through 2VAC5-10-70).**

**2VAC5-11. Public Participation Guidelines (adding 2VAC5-11-10 through 2VAC5-11-110).**

Statutory Authority: §§2.2-4007.02 and 3.2-109 of the Code of Virginia.

Effective Date: November 12, 2008.

Agency Contact: Roy E. Seward, Jr., Regulatory Coordinator, Department of Agriculture and Consumer Services, Oliver W. Hill, Sr., Building, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3535, FAX (804) 371-7679, or email roy.seward@vdacs.virginia.gov.

Summary:

*The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.*

*This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.*

## CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

### Part I Purpose and Definitions

#### **2VAC5-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Agriculture and Consumer Services or the Department of Agriculture and Consumer Services. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

#### **2VAC5-11-20. Definitions.**

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Agriculture and Consumer Services or the Department of Agriculture and Consumer Services, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal

or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

### Part II Notification of Interested Persons

#### **2VAC5-11-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

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F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

## **2VAC5-11-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 2VAC5-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a re-proposed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

### Part III

#### Public Participation Procedures

## **2VAC5-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a re-proposed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

## **2VAC5-11-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

## **2VAC5-11-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or

when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

### **2VAC5-11-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

### **2VAC5-11-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

### **2VAC5-11-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

### **2VAC5-11-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1421; Filed September 22, 2008, 3:56 p.m.

## **PESTICIDE CONTROL BOARD**

### **Final Regulation**

Title of Regulation: 2VAC20-51. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act (amending 2VAC20-51-10 through 2VAC20-51-210).

Statutory Authority: §3.2-3906 of the Code of Virginia.

Effective Date: December 1, 2008.

Agency Contact: Liza Fleeson, Program Manager, Department of Agriculture and Consumer Services, P. O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 786-9149, TTY (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

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## Summary:

*The amendments (i) add new definitions to clarify who must be certified and keep pesticide application records; (ii) add new definitions to clarify the required supervision standard for people training to become applicators; (iii) add categories and subcategories of pesticide applicators; (iv) establish minimum standards for on-the-job training for registered technicians when working in different categories or subcategories; (v) establish a time frame within which a person would have to finish training and take the registered technician examination; (vi) eliminate the provision allowing businesses or agencies to proctor the registered technician examination to their own employees; and (vii) require applicators not for hire to keep records of all pesticides applied, not just those that are restricted use.*

*Changes from the proposed regulation include additional language that requires that if an applicant fails the registered technician examination, he must reapply and retake the exam within 30 days. If the exam is failed again, or not taken within 30 days, the individual may not apply pesticides commercially until the exam is passed.*

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.

## 2VAC20-51-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. An asterisk or double asterisk following a definition indicates that the definition has been taken from the Virginia Pesticide Control Act, Article 1 ([ ~~§3.1-249.27~~ (§3.2-3900) et seq.) or Article 4 ([ ~~§3.1-249.59~~ (§3.2-3935) et seq.), respectively, of Chapter [ ~~14.1 39~~ ] of Title [ ~~3.1 3.2~~ ] of the Code of Virginia.

"Accident" means an unexpected, undesirable event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Act" means the Virginia Pesticide Control Act ([ ~~§3.1-249.27~~ (§3.2-3900) et seq. of the Code of Virginia).

~~"Adjuvant" means any substance added to a pesticide formulation to enhance the effect of the active ingredient.~~

"Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons, primarily for sale, consumption, propagation, or other use by man or animals.\*

"Board" means the Pesticide Control Board.\*

"Board-approved training" means a course which includes, at a minimum, study and review of all the material contained in an edition used in Virginia of (i) a basic pesticide applicator certification training core manual and (ii) a certification training manual for each specific category pertaining to the type of pesticide application to be done.

"Certificate" means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3 ([ ~~§3.1-249.51~~ (§3.2-3929) et seq.) of Chapter [ ~~14.1 39~~ ] of Title [ ~~3.1 3.2~~ ] of the Code of Virginia.

"Certification" or "certified" means the recognition granted by the Pesticide Control Board to an applicator upon satisfactory completion of board-approved requirements.\*

"Chemigation" means the application of any pesticide through an irrigation system.

"Commercial applicator" means any applicator who has completed the requirements as determined by the board, including appropriate training and time in service, to apply for a certification, and who uses or supervises the use of any pesticide for any purpose or on any property, other than as provided in the definition of private applicator.\*

"Commercial applicator not for hire" means any commercial applicator who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. ~~This definition shall~~ It also apply applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.\*

"Competent person" means a person having the demonstrated ability to perform the task to which he is assigned.

"Department" means the Department of Agriculture and Consumer Services.\*

"Drift" means the physical movement of pesticide through the air at the time of pesticide application or soon thereafter from the target site to any nontarget or off-target site. Pesticide drift will not include movement of pesticides to nontarget or off-target sites caused by erosion, migration, volatility, or windblown soil particles that occurs after application unless specifically addressed on the pesticide product label with respect to drift control requirements.

"EPA" means the United States Environmental Protection Agency.

"Fumigant" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors, ~~which gas or gases, fumes or~~

vapors, when liberated and used, that will destroy vermin, rodents, insects, and other pests, and are usually lethal, poisonous, noxious, or dangerous to human life.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.\*

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.\*

"Incident" means a definite and separate occurrence or event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.\*

"Knowledge" means the possession and comprehension of pertinent facts, together with the ability to use them in dealing with specific problems and situations within the pesticide context.

"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.\*

"Labeling" means all labels and other written, printed, or graphic matter (i) upon the pesticide or device or any of its containers or wrappers, (ii) accompanying the pesticide or device at any time, or (iii) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.\*

"Licensed" or "licensee" means those businesses which, when meeting the requirements established by the Pesticide Control Board, are issued a license to engage in the sale, storage, distribution, recommend the use, or application of pesticides in Virginia in exchange for compensation.\*

"Marine antifoulant paint" means any compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.\*\*

~~"Nontarget organism" means any living organism, including but not limited to animals, insects, and plants, other than the one against which the pesticide is intended to be applied.~~

"Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest; (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (iii) any substance which is intended to become an active ingredient thereof.\*

"Pesticide business" means any person engaged in the business of: distributing, applying or recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the user. The term "pesticide business" does not include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations which produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the board.\*

"Private applicator" means an applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.\*

~~"Reentry interval" as noted on the pesticide label, means the amount of time which must elapse between the time of a pesticide application and the time when it is safe for a person to enter the treated area without label required personal protective equipment.~~

"Registered technician" means an individual who renders services similar to those of a certified commercial applicator, but who has not completed all the training or time in service requirements to be eligible for examination for certification as a commercial applicator and is limited to application of general use pesticides. However, if he applies restricted use pesticides he shall do so only under the direct supervision of a certified commercial applicator.\*

"Registered technician not for hire" means any registered technician who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. It also applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

"Repeat violation" means another violation following the first violation of the same provision of the Virginia Pesticide Control Act or the federal Insecticide, Fungicide, and Rodenticide Act (7 USC §136 et seq.), or regulations adopted

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pursuant thereto, committed within a three-year period commencing with the date of official notification of the first violation of the provision.

"Restricted entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified for restricted use by the administrator of the EPA under the provisions of 1977 (7 USC §3(d)(1)(c)) of the federal Insecticide, Fungicide, and Rodenticide Act (as amended).

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the commissioner shall declare to be a pest.\*

~~"Synergism" means the interaction of two or more active ingredients in a pesticide formulation which produce a total pesticidal effect that is greater than the sum of the ingredients.~~

"Tributyltin compounds" means any compound having three normal butyl groups attached to a tin atom and with or without an anion such as chloride, fluoride, or oxide.\*\*

"Under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person.\*

"Under the direct on-site supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and is physically present on the property upon which the ~~pesticides are~~ pesticide is being applied, and is in constant visual contact with the person applying the pesticide.

~~"Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.\*~~

"Use" means the employment of a pesticide for the purposes of (i) preventing, destroying, repelling, or mitigating any pest or (ii) regulating plant growth, causing defoliation or desiccation of plants. The term "use" shall include application or mixing, and shall include handling or transfer of a pesticide after the manufacturer's original seal is broken. The term "use" shall also include any act with respect to a particular pesticide which is consistent with the label directions for that particular pesticide.\*

"Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.\*\*

## Part II Certification of Pesticide Applicators

### **2VAC20-51-20. General requirements for certification.**

A. The following persons must be certified as pesticide applicators:

1. Commercial applicators;
2. Registered technicians; and
3. Private applicators.

B. Commercial applicators not for hire must be certified only when using any pesticide in the following areas except as noted in subsection C of this section:

1. Areas open to the general public at daycare facilities, educational institutions, health care facilities, and convalescent facilities;
2. Areas where open food is stored, processed, or sold; and
3. Recreational lands over five acres in size.

C. Employees of local, state, and federal governmental agencies who use or supervise the use of any ~~pesticides~~ pesticide on any area in the performance of their official duties must be certified as either commercial applicators not for hire or registered technicians, but they are exempt from any certification fees.

D. All persons desiring certification as pesticide applicators must:

1. Complete board-approved training appropriate for the desired classification; ~~and~~
2. Submit a completed application to the commissioner; and
- ~~2.~~ 3. Pass required examination(s).

a. Applicants who do not pass the examination on their first attempt are eligible to be reexamined for the same category 10 days from the date of the first examination.

b. Applicants who fail on the second or subsequent attempts must wait 30 days from the date of the last examination before being reexamined in the same category.

c. Applicants requesting reexamination must resubmit a completed application to the commissioner or his duly authorized agent and pay the nonrefundable applicator certification fee ~~again~~ as determined by 2VAC20-30, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.

E. Persons with a history of repeat violations of federal or state pesticide laws or whose certification or pesticide business license has been revoked within the two-year period

immediately prior to application are not eligible for certification. ~~Persons~~ Such persons may appear before the board to show why they should be granted certification as outlined under provisions of [ §3.1-249.63 D §3.2-3940 E ] of the Code of Virginia.

F. Applicants for certification cannot engage in the activity for which they are requesting certification, unless participating in supervised direct on-site training, until certification has been issued by the commissioner. Commercial applicators may not apply pesticides in any category or subcategory activity until they have passed the category-specific examination and obtained the appropriate certification.

G. A commercial or private applicator or registered technician may request a duplicate of the certification card if the applicator's or technician's card has been lost, stolen, mutilated or destroyed. The department shall issue a duplicate card to the applicator or technician upon payment of the costs of duplication.

**2VAC20-51-30. Specific certification requirements for commercial applicators.**

A. In addition to the general requirements listed in 2VAC20-51-20, applicants for commercial applicator certification shall meet the following requirements:

1. Certification as a registered technician, as well as employment as a registered technician for at least a year; or
2. One year of education, training, or experience in a pesticide related field which provides the equivalent practical knowledge of proper pesticide use required of a registered technician.

B. The application process for commercial applicators is as follows:

1. The application must be in writing to the commissioner; and
2. The application must contain:
  - a. Name;
  - b. Principal business address in the Commonwealth and elsewhere;
  - c. Qualifications and proposed operations; and
  - d. Classification(s) desired.

Individuals seeking certification as commercial applicators must pay a fee as determined by ~~regulations promulgated by the Pesticide Control Board 2VAC20-30, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.~~

C. Applicants shall, within 90 days after submitting the application and paying the fee, report to an authorized testing location and take the required examinations.

D. Aerial pesticide application applicants must meet the requirements of the Federal Aviation Agency, the Department of Aviation of the Commonwealth, and any other applicable federal or state laws or regulations to operate aerial equipment.

**2VAC20-51-40. Specific certification requirements for private applicators.**

A. Each applicant for a private applicator's certificate shall apply to the commissioner and then report to an authorized testing location within 90 days and take an examination for each certification category, specified in 2VAC20-51-80, applicable to his operation. The application shall contain the applicant's name, address and classification desired for certification.

B. Persons who cannot read or understand labels ~~will~~ shall not be certified as private applicators unless they demonstrate competence to apply restricted use pesticides on their own properties. After consulting the appropriate Virginia Cooperative Extension ~~Service~~ agent, a department pesticide investigator may recommend that the board grant a waiver of the literacy requirement. Persons certified under this waiver shall obtain certification in the categories of limited certificate or single product certification as described in 2VAC20-51-80. ~~Recommendations shall be based upon personal knowledge of the individuals' competence to apply restricted use pesticides on their own properties.~~

**2VAC20-51-50. Certification procedures for registered technicians.**

A. In addition to the general requirements listed in 2VAC20-51-20, individuals seeking certification as registered technicians must:

1. Receive on-the-job training in the proper application of pesticides under the direct on-site supervision of a certified commercial applicator for at least 20 hours during the six-month period prior to applying for certification;
2. Complete at least 20 hours of board-approved training;
3. Submit an application form with the fee established by regulations of the Pesticide Control Board; and
4. ~~Pass~~ Take the examination within 90 days after ~~submitting the application and paying the fee~~ an individual is hired or transferred into a position where duties and functions involve the commercial use of pesticides. ~~Individuals not passing the examination [ must follow the procedures outlined in 2VAC20-51-20 D-3 on the first attempt must reapply, following the procedures outlined in 2VAC20-51-20 D 3, and retake the examination within 30 days after the first attempt. Individuals failing to take and~~

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pass the exam within 30 days of the initial exam may not apply pesticides commercially, even under direct on-site supervision, until they pass the examination ] .

~~B. Certified commercial applicators may apply to the commissioner, or his duly authorized agent, in writing, for authorization to proctor the registered technician exam. Authorized proctors may administer and grade the examinations, and shall notify the commissioner, or his duly authorized agent, of the grade received by the applicant. Failure to safeguard examination materials or follow testing procedures shall result in revocation of authority to proctor the registered technician examination. Before registered technicians begin working in any application category or subcategory that is different from the category in which they received their original training, they shall receive additional training from a commercial applicator in the following aspects of pesticide application as it relates to the proposed category or subcategory of work:~~

1. Pesticides to be used, including reading and understanding the label;
2. Application equipment and techniques;
3. Pests to be controlled;
4. Personal protective equipment and clothing; and
5. Environmental concerns, including storage and disposal of pesticides applied.

The commercial applicator providing training to a registered technician shall be certified in the category or subcategory for which he is providing the training and shall provide proof to the department of such training on forms provided by the department. Such forms must be received by the department within 10 calendar days of the completion of such training.

## **2VAC20-51-70. Categories for commercial applicator certification.**

A. Commercial applicators must be certified in one or more of the following commercial applicator categories or subcategories:

1. Agricultural pest control.
  - a. Agricultural plant pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in production of agricultural crops, or on grasslands, or noncrop agricultural lands.
  - b. Agricultural animal pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides on agriculturally related animals.
  - c. Fumigation of soil and agricultural products. This subcategory is for commercial applicators who will be using or supervising the use of pesticides for soil fumigation in production of an agricultural commodity

and the application of pesticides for fumigation of agricultural products. Certification in this subcategory requires concurrent certification in the agricultural plant pest control category.

d. Chemigation. This subcategory is for commercial applicators who will be using or supervising the use of pesticides through an irrigation system. Certification in this subcategory requires concurrent certification in the agricultural plant pest control category.

2. Forest pest control. This category is for commercial applicators who will be using or supervising the use of pesticides in forests, forest nurseries, and seed orchards.

3. Ornamental and turf pest control.

a. Ornamental pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in the maintenance and production of ornamental trees, shrubs, and flowers in and out-of-doors.

b. Turf pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in the production and maintenance of turf, including, but not limited to, turf in golf courses, residential lawns, parks, and cemeteries.

4. Seed treatment (excluding fumigation). This category is for commercial applicators who will be using or supervising the use of pesticides on seeds.

5. Aquatic pest control.

a. Aquatic pest control - general. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in or on standing or running water, for the express purpose of controlling pests. This excludes applicators engaged in public health related activities included in subdivision 8 of this subsection, public health pest control.

b. Marine antifoulant paints. This subcategory is for commercial applicators who will be using or supervising the use of marine antifoulant paints containing tributyltin or other restricted use pesticides.

6. Right-of-way pest control. This category is for commercial applicators who will be using or supervising the use of pesticides in the maintenance of public rights-of-way and in the maintenance of fence lines, structural perimeters or other similar areas.

7. Industrial, institutional, structural, and health-related pest control.

a. General pest control (excluding fumigation). This subcategory is for commercial applicators who will be using or supervising the use of pesticides to control household type pests, pests that inhabit or infest

structures, stored products, and residential food preparation areas, and pests capable of infesting or contaminating foods and foodstuffs at any stage of processing facilities.

b. Wood-destroying pest control (excluding fumigation). This subcategory is for commercial applicators who will be using or supervising the use of pesticides to control organisms that destroy structures made of wood.

c. Fumigation. This subcategory is for commercial applicators who will be using or supervising the use of fumigant-type pesticides.

d. Vertebrate pest control (excluding structural invaders). This subcategory is for commercial applicators who will be using or supervising the use of pesticides to control vertebrate pest animals.

e. Sewer root pest control. This subcategory is for commercial applicators who use pesticides for sewer line root control.

8. Public health pest control. This category is for commercial applicators who will be using or supervising the use of pesticides for the management and control of pests having medical and public health significance.

9. Regulatory pest control. This category is for federal, state, and local governmental employee applicators who will be using or supervising the use of pesticides in the control of regulated pests.

10. Demonstration and research pest control. This category is for commercial applicators who will be demonstrating the proper use and techniques of application of pesticides (including classroom demonstration), or who will be supervising such demonstration. It also includes applicators who will be conducting pesticide research on greenhouse or field plots.

11. Aerial pesticide application. This category is for commercial applicators who will be using or supervising the use of any pesticide applied by fixed- or rotary-wing aircraft.

12. Wood preservation and wood product treatment. This category is for commercial applicators who will be using or supervising the use of pesticides at treating plants and sawmills for preservative treatment of wood and wood products.

13. Miscellaneous. This category is to be used to designate categories or subcategories of commercial applicators using specific pesticides or uses for which the U.S. EPA may mandate certification in order to allow for the pesticide or use.

B. A commercial applicator certified in one category and seeking initial certification in one or more additional

categories shall meet the certification requirements of each of the new categories in which he desires certification.

**2VAC20-51-90. Determination of general knowledge and qualifications for private and commercial applicators and registered technicians.**

A. Applicants shall be tested on their knowledge and qualifications concerning the use and handling of pesticides. The examination will test the applicants' general knowledge required for all categories, and the additional knowledge specifically required for each category or subcategory in which an applicator desires to be certified.

B. All applicants for certification as private or commercial applicators or registered technicians shall demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides, as contained in a basic pesticide applicator certification training core manual. Testing will be based on problems and situations in the following areas:

1. Federal and Commonwealth of Virginia pesticide laws and regulations;
2. Understanding and interpreting pesticide labels;
3. Handling of accidents and incidents;
4. Proper methods of storing, mixing/loading, transporting, handling, applying, and disposing of pesticides;
5. Safety and health, including proper use of personal protective equipment;
6. Potential adverse effects caused by the application of pesticides under various climatic or environmental conditions, such as drift from the target area, pesticide runoff, ground water and drinking water contamination, and hazard to endangered species; and
7. Recognizing common pests and general pest biology.

**2VAC20-51-100. Specific knowledge required for the categories of commercial applicators.**

Applicants for commercial applicator certification shall possess the skills and knowledge associated with the chosen category(s) as they pertain to those items listed in 2VAC20-51-90 B 1 through 6, including recognizing category specific pests and their biology as contained in a the appropriate Virginia category specific training manual(s).

**2VAC20-51-160. Revocation of certificate by the board.**

~~A. Any of the violative acts listed under §3.1-249.63 C of the Code of Virginia shall constitute grounds for revocation by the board of a certificate. The board may, after opportunity for a hearing, deny, suspend, revoke or modify a certificate upon any violation of any act set out in [ §3.1-249.63 C §3.2-3940 B ] of the Code of Virginia.~~

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~~B. The board shall suspend the license or certificate of an individual if a civil penalty issued to the person is not paid within 60 days of issuance unless the business or person challenges such civil penalty pursuant to §3.1-249.70 F of the Code of Virginia. If the board imposes a civil penalty upon a person and such civil penalty is not paid within 60 days thereof, the certificate of such person shall automatically be suspended until payment in full is made. If the person appeals the board's order imposing the civil penalty, then the person may forward the proposed amount of the civil penalty to the commissioner's office for placement in an interest-bearing trust account in the State Treasurer's office. Upon such an amount being held, the suspension shall not be imposed or shall be lifted, as the case may be. This provision relates only to a suspension caused by a failure to pay the civil penalty and does not affect any suspension or revocation of a certificate for any other reason.~~

## Part VII

### Reporting of Pesticide Accidents, Incidents, or Loss

#### **2VAC20-51-170. Reporting of pesticide accidents and incidents.**

A. Commercial or private applicators or registered technicians shall report any pesticide accident or incident in which they are involved that constitutes a threat to any person, to public health or safety, or to the environment, as a result of the use or presence of any pesticide. The accident or incident shall be reported whether or not a restricted use pesticide is involved.

~~B. The applicator shall make the initial notification to the department's Office of Pesticide Services by telephone within a reasonable time, not to exceed 48 hours after the accident or incident occurrence, should circumstances prevent immediate notification. The applicator shall prepare and submit a full written report of the accident or incident to the Office of Pesticide Services within 10 days after the initial notification.~~

~~C. B.~~ When the accident or incident involves a discharge or spillage of a pesticide, the applicator shall contact the department for guidance to determine whether the discharged or spilled amount is a reportable quantity.

~~D. C.~~ The applicator shall make the initial notification to the department's Office of Pesticide Services by telephone within a reasonable time, not to exceed 48 hours after the accident or incident occurrence, should circumstances prevent immediate notification. The applicator shall prepare and submit a written report of the accident or incident to the Office of Pesticide Services within 10 working days after the initial notification. The report shall include the following:

1. Name of individuals involved in accident or incident;
2. Name of pesticide involved;
3. Quantity of pesticide spilled, and containment procedures;

4. Time, date, and location of accident or incident;
5. Mitigating actions taken; and
6. Bodies Name (or description if unnamed) and location of bodies of water nearby where contamination of such bodies of water could reasonably be expected to occur due to natural or manmade actions.

#### **2VAC20-51-200. General recordkeeping requirements for commercial applicators not for hire and registered technicians not for hire.**

A. Commercial applicators not for hire and registered technicians not for hire, being exempt from the pesticide business license requirement of the board and the recordkeeping requirements under this license, are required to maintain pesticide application records as prescribed in this chapter. These records shall be maintained by the commercial applicator not for hire and the registered technician not for hire for a period of two years.

B. Records governed by this regulation shall be made available for inspection by the commissioner, or his duly authorized agent, during normal business hours upon written request. Records not readily available shall be submitted to the commissioner within 72 hours, if so requested in writing.

C. Persons possessing records governed by this part shall fully comply with the requirements contained in 7 USC §136f and regulations adopted pursuant thereto.

#### **2VAC20-51-210. Specific recordkeeping requirements for commercial applicators not for hire and registered technicians not for hire.**

Commercial applicators not for hire and registered technicians not for hire shall maintain a record of each restricted use pesticide applied, containing the following:

1. Name of property owner, address or location, and, as applicable, phone number of the site of application;
2. Name and certification number (or certification number of the supervising certified applicator) of the person making the application;
3. Day, month, and year of application;
4. Type of plants, crops, animals, or sites treated and ~~principle~~ principal pests to be controlled;
5. Acreage, area, or number of plants or animals treated;
6. Brand name or common product name of pesticide used;
7. EPA registration number;
8. Amounts of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; and
9. Type of application equipment used.

**NOTICE:** The forms used in administering 2VAC20-51, Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Agriculture and Consumer Services, 1100 Bank Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

Statutory Authority: §§28.2-201, 28.2-210 and 28.2-507 of the Code of Virginia.

Effective Date: October 1, 2008, through October 31, 2008.

Agency Contact: Jane Warren, 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 betty.warren@mrc.virginia.gov.

**FORMS**

Record of Required Additional Registered Technician Training [ ~~(proposed)~~ (eff. 12/08) ]:

Commercial Pesticide Applicator Certification Application - A, Form VDACS-07211 (eff. ~~11/98~~ 11/01).

Pesticide Registered Technician Application [ ~~7~~ ] Form VDACS-07212 (eff. ~~11/98~~ 11/01).

Private Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination at Department of Motor Vehicles Customer Service Center (eff. 12/98).

Application for Reciprocal Pesticide Applicator Certificate, Form VDACS-07210 (eff. ~~7/95~~ 7/00).

Power of Attorney (not dated).

Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination - B, Form VDACS-07218 (eff. ~~11/98~~ 11/01).

Commercial Pesticide Applicator Certification Exam, ~~Form VDACS-07216 (not dated)~~ bubble answer sheet, 2003.

Private Pesticide Applicator Certification Exam bubble answer sheet, 2003.

Virginia Registered Technician Certification Examination Answer Sheet (eff. 2/98).

Not-For-Hire Virginia Registered Technician Certification Examination Answer Sheet (eff. 2/98).

VA.R. Doc. No. R04-77; Filed September 23, 2008, 9:24 a.m.



**TITLE 4. CONSERVATION AND NATURAL RESOURCES**

**MARINE RESOURCES COMMISSION**

**Emergency Regulation**

Title of Regulation: **4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-35, 4VAC20-260-40).**

Preamble:

*The amendments establish a maximum cull size of 4-1/4 inches for harvested oysters, culling tolerances for undersized and oversized oysters, and stricter penalties for the Lower Rappahannock River, Rotation Areas 1 through 3, in the 2008-2009 public oyster harvest season.*

**4VAC20-260-35. Maximum cull size in the Rappahannock River.**

In order to protect potentially disease tolerant oysters in the Lower Rappahannock River, maximum size limits are hereby established. In the Lower Rappahannock River, Rotation Areas 1 through ~~6~~ 3, oysters larger than the maximum size limit shall either be collected by the Marine Resources Commission or returned immediately to the natural beds, rocks, or shoals when taken. Allowance for oversized oysters and shells incidentally retained during culling are described in 4VAC20-260-40.

Oysters taken for direct human consumption from Rotation Areas 1 through ~~6~~ 3 in the Lower Rappahannock River shall not have shells greater than 4-1/4 inches in length.

**4VAC20-260-40. Culling tolerances or standards.**

A. In the clean cull areas, except the Lower Rappahannock River, Rotation Areas 1 through ~~6~~ 3, if more than one four-quart measure of undersized oysters or shells is found per bushel inspected, it shall constitute a violation of this emergency chapter.

B. In the Lower Rappahannock River, Rotation Areas 1 through ~~6~~ 3, if more than one four-quart measure of undersized or oversized oysters or shells is found per bushel inspected, it shall constitute a violation of this emergency chapter.

C. In the James River seed areas, if more than one six-quart measure of shells is found per bushel of seed oysters inspected, it shall constitute a violation of this chapter.

D. In the James River seed areas, if more than one four-quart measure of undersized oysters or shells are found per bushel of clean cull oysters inspected, it shall constitute a violation of this chapter.

E. On the seaside of Eastern Shore seed areas, if more than one four-quart measure of undersized (less than three inches)

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oysters and shell is found per bushel of oysters to be marketed for direct consumption, it shall constitute a violation of this chapter.

V.A.R. Doc. No. R09-1628; Filed September 29, 2008, 7:25 a.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The following regulation 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.

**Title of Regulation:** 4VAC20-620. **Pertaining to Summer Flounder (amending 4VAC20-620-20, 4VAC20-620-30, 4VAC20-620-40).**

**Statutory Authority:** §§28.2-201 and 28.2-204 of the Code of Virginia.

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

**Agency Contact:** Jane Warren, 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 betty.warren@mrc.virginia.gov.

### Summary:

*The amendments (i) delay opening of the fall-directed commercial flounder fishery until the first Monday in December; (ii) delay opening the winter-directed commercial flounder fishery until the last Monday in February; (iii) extend the 10-day landing period to a 12-day landing period in the winter directed commercial flounder fishery; (iv) redefine "land" or "landing" as to offload; (v) establish the quota as a total of allowable landings; (vi) modify the possession limit from 12,500 pounds to 25,000 pounds for the last Monday in February through the day preceding the first Monday in December; (vii) modify the possession limit from 10,000 pounds to 20,000 pounds from the first Monday in December through December 31 of each year; (viii) establish that upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all Summer Flounder aboard any vessel landing Summer Flounder in Virginia; and (ix) establish that when contacting the VMRC operations station the buyer shall provide an estimate of the landings weight.*

*These amendments make it unlawful to (i) land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period and (ii) 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 allowable landings has been taken. The*

*Marine Resources Commission will give timely notice of any changes in possession limits.*

### 4VAC20-620-20. Definitions.

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

"Chesapeake Bay and its tributaries" means all tidal waters of Virginia, including the Potomac River tributaries but excluding the coastal area as defined in this section.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea and all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County, including areas east of the causeway from Fisherman Island to the mainland and the City of Virginia Beach, including federal areas and state parks fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry.

"Land" or "landing" means to ~~enter port with finfish, shellfish, crustaceans or other marine seafood on board any boat or vessel, to begin offloading~~ offload or attempt to offload finfish, shellfish, crustaceans or other marine seafood; ~~or to offload finfish, shellfish, crustaceans, or other marine seafood.~~

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond, thence upstream to the District of Columbia boundary.

"Safe harbor" means that a vessel has been authorized by the commissioner to enter Virginia waters from federal waters solely to either dock temporarily at a Virginia seafood buyer's place of business or traverse the Intracoastal Waterway from Virginia to North Carolina.

### 4VAC20-620-30. Commercial harvest quotas quota and allowable landings.

A. During each calendar year, allowable commercial landings of Summer Flounder shall be limited to ~~the~~ a quota in 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 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 of the annual quota described in subsection A of this section. ~~Out of~~ 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 the day preceding the ~~last first~~ Monday in ~~October of each calendar year~~, December allowable landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 70.7% of the ~~total~~ quota described in subsection A of this section after deducting the amount specified in subsection B of this section.

D. From the ~~last first~~ Monday in ~~October~~ December through December 31 ~~of each calendar year~~, allowable landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 29.3% of the ~~total~~ quota, as described in subsection A of this section, after deducting the amount specified in subsection B of this section, and as may be further modified by subsection E.

E. ~~During the period set forth in subsection C of this section, should~~ Should landings from the first Monday in January through the day preceding the first Monday in December exceed or fall short of the quota specified for that period 70.7% of the quota described in subsection A of this section, any such excess shall be deducted from allowable landings described in subsection D of this section, and any such shortage shall be added to, ~~the quota for the period set forth the allowable landings as described in subsection D of this section~~. Should landings the commercial harvest specified in subsection B of this section be projected to fall short of the quota specified for that period as less than 300,000 pounds, any such shortage shall be added to the quota for the period set forth allowable landings described in subsection D of this section.

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

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 and landing limitations.**

A. From January 1 through the day preceding the ~~first~~ last 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 ~~first~~ last Monday in February through the day preceding the ~~last first~~ Monday in ~~October~~ December, 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~~ any amount of Summer Flounder in excess of ~~12,500~~ 25,000 pounds.
2. Land Summer Flounder in Virginia for commercial purposes more than twice ~~within~~ during each consecutive ~~10-day~~ 12-day period, with the first ~~10-day~~ 12-day period beginning on the ~~the first~~ last Monday in February.
3. Land in Virginia more than a ~~total of~~ 12,500 pounds of Summer Flounder during each consecutive ~~10-day~~ 12-day period, with the first ~~10-day~~ 12-day period beginning on the ~~first~~ last Monday in February.
4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.
5. 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 allowable landings have been taken. The Marine Resources Commission will give timely notice of any changes in possession limits.

~~C. When it is projected and announced that 85% of the quota, for the period from the first Monday in January through 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. C.~~ From the ~~last first~~ Monday in ~~October~~ December 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~~ any amount of Summer Flounder in excess of ~~10,000~~ 20,000 pounds.
2. Land Summer Flounder in Virginia for commercial purposes more than twice ~~within~~ during each consecutive ~~10-day~~ 12-day period, with the first ~~10-day~~ 12-day period beginning on the ~~last first~~ Monday in ~~October~~ December.
3. Land in Virginia more than a total of 10,000 pounds of Summer Flounder during each consecutive ~~10-day~~ 12-day

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period, with the first ~~10-day~~ 12-day period beginning on the ~~last first~~ Monday in ~~October~~ December.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

~~4.~~ 5. 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 allowable landings described in 4VAC20-620-30 D have been taken, except as described in subdivision ~~5~~ 6 of this subsection. The Marine Resources Commission will give timely notice of any changes in possession limits.

~~5-6.~~ Possess aboard any vessel in Virginia any amount of Summer Flounder once it has projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

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

D. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all Summer Flounder aboard any vessel landing Summer Flounder in Virginia.

~~F. Each E. Any possession limit described in subsections A, B, C and D of this section shall be determined by the net weight in pounds of Summer Flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The net weight of any Summer Flounder in pounds found in excess of this any possession limit described in subsections A, B, C and D 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 I H 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 I H of this section.~~

~~G. F.~~ 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.

~~H. G.~~ 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, an estimate of the amount in pounds of Summer Flounder on board that vessel, 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 ~~40~~ 6 p.m. to 7 a.m.

~~I. H.~~ 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.

~~J. I.~~ 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. R09-1627; Filed September 30, 2008, 3:19 p.m.

## Final Regulation

<p><u>REGISTRAR'S NOTICE:</u> The following regulation 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.</p>
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Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-20, 4VAC20-720-40, 4VAC20-720-50, 4VAC20-720-60, 4VAC20-720-70, 4VAC20-720-75, 4VAC20-720-80, 4VAC20-720-95, 4VAC20-720-100, 4VAC20-720-106).**

Statutory Authority: §§28.2-201, 28.2-507 and 28.2-518 of the Code of Virginia.

Effective Date: October 1, 2008.

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Summary:

*These amendments establish open harvest seasons in the James River Seed Area, October 1, 2008, through April 30, 2009; James River Hand Scrape Area and Thomas Rock Hand Scrape Area, November 1, 2008, through January 31, 2009; Rappahannock River Rotation Area 2, December 1, 2008, through January 31, 2008, and Rappahannock River Rotation Area 4, October 1, 2008, through November 30, 2008; and February 1, 2009, through March 31, 2009; Great Wicomico River, Chesapeake Bay (Blackberry Hangs and Deep Rock), York River, Rappahannock River Area 9, and Mobjack Bay, December 1, 2008, through February 28, 2009; Tangier - Pocomoke Sounds, Rotation Area 2, December 1, 2008, through February 28, 2009; and the seaside of the Eastern Shore, November 1, 2008, through February 28, 2009. The commission will consider alternate season dates. These amendments also define the Mobjack Bay hand scrape area.*

**4VAC20-720-20. Definitions.**

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

"Coan River Area" means that area of the Coan River to the Virginia-Maryland state line (PRV1A to PRV1B), except for that area above a line from Walnut Point (Survey Station Walnut) to Stephens Point (Survey Station Arthur).

"Deep Rock Patent Tong Area (Lower Chesapeake Bay)" means the area described as follows: starting at Cherry Point, Gwynns Island, thence northeast to G"1P" along the south side of the channel to Piankatank River; thence east-southeast to G"1R"; thence southwest to Sandy Point, Gwynns Island, North of Hole-in-the-Wall.

"Deep Water Shoal State Replenishment Seed Area (DWS)" in the James River (574.66 Acres) means the areas beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1 as located by Virginia State Plane Coordinates, South Zone, NAD 1927, north 302,280.00, east 2,542,360.00; thence north azimuth 30°49'59", 4,506.99 feet to Corner 2, north 306,150.00, east 2,544,670.00; thence north azimuth 135°08'57", 5,430.60 feet to Corner 3, north 302,300.00, east 2,548,500.00; thence north azimuth 212°13'54", 3,487.42 feet to Corner 4, north 299,350.00, east 2,546,640.00; thence north azimuth 269°10'16", 2,765.29 feet to Corner 5, north 299,310.00, east

2,543,875.00; thence north azimuth 332°58'26", 3,334.09 feet to Corner 1, being the point of beginning.

"Great Wicomico River Hand Scrape Area" means that area east of a line drawn from Sandy Point to Cockrell Point.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

"James River Hand Scrape Area" means those public oyster grounds of the James River west of the Monitor and Merrimac Bridge Tunnel and northeast of the Mills E. Godwin/Nansemond River Bridge (Route 17) to the James River Bridge (Route 17).

"Lower Machodoc Area" means that area of the Lower Machodoc River to the Virginia-Maryland state line (PRV5A to PRV5C).

"Mobjack Bay Hand Scrape Area" shall consist of all of Public Ground No. 25, Gloucester County (Towe Stake) within these coordinates: 37° 20.59', N., 76° 23.24', W.; 37° 20.38', N., 76° 22.72', W.; 37° 19.86', N., 76° 23.59', W.; 37° 20.03', N., 76° 23.77', W.; and 37° 20.39', N., 76° 23.58', W. and that portion of Public Ground No. 2, Mathews County (Pultz Bar), within these coordinates: 37° 21.25', N., 76° 21.37', W.; 37° 21.27', N., 76° 20.96', W.; 37° 21.02', N., 76° 20.94', W.; and 37° 21.05', N., 76° 21.33', W.

"Nomini River Hand Scrape Area" means that area of the Nomini River inside of Public Ground #1 No.1 to the Virginia-Maryland state line (PRV6A to PRV6B) (Kingscopsico), Public Ground 26 (Deans) and Public Ground 28 (Cut).

"Oyster Patent Tong" means any patent tong not exceeding 100 pounds in gross weight, including any attachment other than rope and with the teeth not to exceed four inches in length.

"Pocomoke and Tangier Sounds Management Area (PTSMA)" means the area as defined in §28.2-524 of the Code of Virginia.

"Public oyster ground" means all those grounds defined in §28.2-551 of the Code of Virginia, all ground set aside as public oyster ground by court order, and all ground set aside as public oyster ground by order of the Marine Resources Commission.

"Rappahannock River Rotation Area 1" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning at the MLW west of Broad Creek (37° 33.952', N., 76° 19.309', W.); thence north to a VMRC buoy on the Baylor line (37° 34.539', N., 76° 19.022', W.) to VMRC buoy (37° 34.683', N., 76° 19.100' W.); thence, northeasterly to VMRC Buoy (37° 35.017', N., 76° 19.450',

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W.); thence, northeasterly to Sturgeon Bar Light (7R) (37° 35.150', N., 76° 19.733', W.); thence, continuing northwest to Mosquito Point Light (8R) (37° 36.100', N., 76° 21.300', W.); thence to the house on Mosquito Point (37° 36.523', N., 76° 21.595', W.) bounded on the east by a line from Windmill Point (37° 35.793', N., 76° 14.180', W.); thence, southeast to Windmill Point Light (37° 35.793', N., 76° 14.180', W.); thence southwesterly to Stingray Point Light (37° 33.673', N., 76° 16.362', W.); thence, westerly to Stingray Point (37° 33.692', N., 76° 17.986', W.)

"Rappahannock River Rotation Area 2" shall consist of all public grounds in the Rappahannock River with a boundary on the east side defined as beginning at the house at Mosquito Point (37° 36.523', N., 76° 21.595', W.); thence, southeast to Mosquito Point Light "8R" (37° 36.100', N., 76° 21.300', W.); thence, continuing southeasterly to Sturgeon Bar Beacon "7R" (37° 35.150', N., 76° 19.733', W.); thence, southwesterly to VMRC buoy (37° 34.933', N., 76° 21.050', W.); thence, southwesterly to VMRC buoy (37° 34.883', N., 76° 21.100', W.); thence, to a pier west of Hunting Creek at Grinels (37° 34.436', N., 76° 26.288', W.). Rappahannock River Rotation Area 2 is bordered on the west by a line beginning at Mill Creek channel marker "4" (37° 35.083', N., 76° 26.950', W.); thence, northeasterly to Mill Creek channel marker "2" (37° 35.483', N., 76° 24.567', W.); thence, northeasterly to the house at Mosquito Point (37° 36.523', N., 76° 21.595', W.).

"Rappahannock River Rotation Area 3" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning from the north channel fender at the Norris Bridge (37° 37.483', N., 76° 25.035', W.); thence, southeast to the house on Mosquito Point (37° 36.523', N., 76° 21.595', W.); thence southwest to Mill Creek channel marker "2" (37° 35.483', N., 76° 24.567', W.); thence southwesterly to Mill Creek channel marker "4" (37° 35.083', N., 76° 24.950', W.); thence northeasterly to Parrotts Creek channel marker "1" (37° 36.033', N., 76° 25.417', W.); thence northerly to VMRC buoy (37° 36.333', N., 76° 25.200', W.); thence returning northerly to the Norris Bridge north channel fender.

"Rappahannock River Rotation Area 4" shall consist of all public grounds in the Rappahannock River with the boundary defined as beginning at the White Stone end of the Norris Bridge (37° 38.129', N., 76° 24.722', W.); thence, along the Norris Bridge to the north channel fender (37° 37.483', N., 76° ~~25.035~~ 25.345', W.); thence westerly to the VMRC buoy 5-4 (36° 38.005', N., 76° 30.028', W.); thence, north to Old House Point (37° 39.139', N., 76° 29.685', W.); thence, northerly to Ball Point (37° 41.660', N., 76° 28.632', W.); thence, continuing northerly to Bar Point (37° 41.666', N., 76° 28.866', W.); thence easterly to Black Stump Point (37° 41.737', N., 76° 28.111', W.); thence, southeasterly to the western headland of Taylor Creek (37° 40.983', N., 76° 27.602', W.); thence, southwesterly to VMRC Buoy at Ferry

Bar north (37° 40.300', N., 76° 28.500', W.); thence, southeasterly to VMRC Buoy at Ferry Bar South (37° 40.167', N., 76° 28.583', W.); thence, southwesterly to Corrotoman Point Duck Blind (37° ~~39.945~~ 39.876', N., 76° ~~28.467~~ 28.420', W.); thence, southerly to VMRC Buoy 543 (37° 39.267', N., 76° 27.850', W.); thence, southerly to VMRC Buoy at Drumming West (37° ~~38.833~~ 38.883', N., 76° 27.683', W.); thence, southerly to VMRC buoy at Drumming East (37° 38.833', N., 76° 27.567', W.); thence, northeasterly to Orchard Point (37° 38.924', N., 76° 27.126', W.).

"Rappahannock River Rotation Area 5" shall consist of public grounds in the Rappahannock River with a boundary defined as beginning east of a line from the east headland of Whiting Creek (37° 36.658', N., 76° 30.312', W.); thence, north to ~~Towles Pt.~~ Towles Point buoy "6" (37° 38.033', N., 76° 30.283', W.); thence, easterly to VMRC buoy 5-4 (37° 38.005', N., 76° 30.028', W.) continuing easterly to the Norris Bridge north channel fender (37° 37.483', N., 76° ~~25.035~~ 25.345', W.); thence, along the Norris Bridge southwest to Grey's Point (37° 36.833', N., 76° 25.999', W.).

"Rappahannock River Rotation Area 6" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning from Balls Point (37° 39.355', N., 76° 34.444', W.); thence, northeast to the flashing red buoy "8" off Rogue Pt. (37° 40.158', N., 76° 32.939', W.); thence, southeasterly to VMRC Towles Point Area buoy (37° 38.833', N., 76° 31.536', W.); thence, southwesterly to VMRC White House Sanctuary buoy (37° 38.150', N., 76° 30.533', W.); thence, southeasterly to red buoy "6" (37° 38.033', N., 76° 30.283', W.); thence, southerly to the eastern headland of the mouth of Whiting Creek (37° 36.658', N., 76° 30.312', W.).

"Rappahannock River Area 7" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning south of a line from Punchbowl Point (37° 44.675', N., 76° 37.325', W.) to Monaskon Point (37° 44.063', N., 76° 34.108', W.) to a line from Rogue's Point (37° 40.040', N., 76° 32.253', W.); thence, northwest to flashing red buoy "8" (37° 40.158', N., 76° 32.939', W.) continuing southwest to Balls Point (37° 39.355', N., 76° 34.444', W.).

"Rappahannock River Area 8" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning east and south of a line from Jones Point (37° 46.786', N., 76° 40.835', W.) to Sharps Point (37° 49.364', N., 76° 42.087', W.) to a line from Punchbowl Point (37° 44.675', N., 76° 37.325', W.) to Monaskon Point (37° 44.063', N., 76° 34.108', W.).

"Rappahannock River Area 9" shall consist of all public grounds in the Rappahannock River with a boundary defined as beginning west of the line drawn from Sharps Pt. (37° 49.364', N., 76° 42.087', W.) to Jones Pt (37° 46.786', N., 76° 40.835', W.) to the Route 360 (~~Drumming~~ Downing Bridge).

"Standard oyster dredge" means any device or instrument having a maximum weight of 150 pounds with attachments, maximum width of 50 inches and maximum tooth length of four inches.

"Tangier-Pocomoke Sounds Rotation Area 1" shall include all public and unassigned grounds within the PTSMA, in Tangier Sound, that are west and south of a line beginning at the Maryland-Virginia Line (37° 54.61360', N., 75° 53.97396', W.) continuing south on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence continuing west to point "Area 2-NW" (37° 53.36335', N., 75° 56.55896', W.); thence south to a point "Area 2-SW" (37° 48.44291', N., 75° 56.48836', W.); thence continuing east to the north end of Watts Island (37° 48.77578', N., 75° 53.59941', W.). Area 1 shall also include all of the public and unassigned grounds in the PTSMA in Pocomoke Sound south and west of a line beginning at the house on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence east southeast to Red Channel Marker # 8 (37° 52.45833', N., 75° 49.40000', W.); thence south southeast to Green Channel Marker "C - 1" (37° 52.10000', N., 75° 47.80833', W.) thence southeast to Flashing Red "2+1" (37° 50.95333', N., 75° 46.64167', W.); thence south to the northernmost tip of Russell Island (37° 48.38796', N., 75° 47.02241', W.).

"Tangier-Pocomoke Sounds Rotation Area 2" shall include all public and unassigned grounds in the PTSMA with a boundary defined as beginning at the house on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence south to the north end of Watts Island (37° 48.77578', N., 75° 53.59941', W.); thence west to a point "Area 2-SW" (37° 48.44291', N., 75° 56.48836', W.); thence north to point "Area 2-NW" (37° 53.36335', N., 75° 56.55896', W.); thence back east to the house on Great Fox Island. This area includes Public Ground # No. 7, known as "Thoroughfare Rock" and Public Ground # No. 8, known as "California Rock" in Tangier Sound. Area 2 shall also include all public and unassigned grounds in the PTSMA in Pocomoke Sound northeast of a line beginning at the house on Great Fox Island (37° 53.69465', N., 75° 53.88988', W.); thence east southeast to Red Channel Marker # 8 (37° 52.45833', N., 75° 49.40000', W.); thence south southeast to Green Channel Marker "C - 1" (37° 52.10000', N., 75° 47.80833', W.); thence southeast to Flashing Red "2+1" (37° 50.95333', N., 75° 46.64167', W.); thence south to the northernmost tip of Russell Island (37° 48.38796', N., 75° 47.02241', W.).

"Tangier Sound Hand Tong Area" means that area in the PTSMA south and west of a line from Fishbone Island thence southeast to bell buoy #5, thence south southwest to buoy #3 (such area to include all of Public Ground 3 and Flat Rock) and shall be a hand tong area only and Cod Harbor (approximately 1,124 acres) beginning at a point of East Point Marsh, said point having the Virginia state coordinates, south section, coordinates of north 555,414.89, east 2,730,388.85;

thence south 79°59', east 2,260 feet to a line designating the western extent of the PTSMA as described in §28.2-524 of the Code of Virginia; thence south 10°16', west 2,800 feet; thence south 28°46', west 8,500 feet to a point on Sand Spit, position north 545,131.78, east, 2,728,014.94; thence along the mean low water line of Cod Harbor in a west, north and northeast direction crossing Canton Creek and Mailboat Harbor from headland to headland to the point of beginning.

"Thomas Rock Hand Scrape Area" means an area in the James River with an eastern boundary being the James River, Route 17 bridge and a western boundary being a line drawn from the south side of the river at Rainbow Farm Point; thence to the channel buoy green #5; and thence to Blunt Point on the north side of the river.

"Unassigned ground" means all grounds other than public oyster ground as defined by this chapter and which have not been set aside or assigned by lease, permit, or easement by the Marine Resources Commission.

"Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area)" means the area in Public Ground Number 118, south from the Smith Point Light to the Great Wicomico Light.

"Yeocomico River Area" means that area of the Yeocomico River inside Public Grounds 102, 104, 107, 112 and 113.

"York River Hand Scrape Area" means an area above the Route 17 or Coleman Bridge in Public Ground No. 30, along the north side of the river, to just above Aberdeen Creek.

**4VAC20-720-40. Open season and areas.**

The lawful seasons and areas for the harvest of oysters from the public oyster grounds and unassigned grounds are as follows:

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, ~~2007~~ 2008, through April 30, ~~2008~~ 2009.
2. Seaside of Eastern Shore: for clean cull oysters only, ~~October 1, 2007~~ November 1, 2008, through ~~January 31, 2008~~ February 28, 2009.
3. The following areas shall be opened from ~~October 1, 2007~~ December 1, 2008, through ~~December 31, 2007~~ February 28, 2009: the Rappahannock River ~~Areas 8 and Area 9~~; the ~~North~~ Great Wicomico River Hand Scrape Area; the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); the York River and Mobjack Bay Hand Scrape ~~Area~~ Areas; and Deep Rock Patent Tong Area (Lower Chesapeake Bay).
4. The Rappahannock River Rotation ~~Areas 4 and 6~~ Area 4: October 1, ~~2007~~ 2008, through November 30, ~~2007~~ 2008, and February 1, 2009, through March 31, 2009. Rappahannock River Rotation Area 2: December 1, 2008, through January 31, 2009.

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5. Tangier - Pocomoke Sounds Rotation Area 4 2: December 1, ~~2007~~ 2008, through February ~~29, 2008~~ 28, 2009.

6. The James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): ~~October~~ November 1, ~~2007~~ 2008, through ~~December 31, 2007, and February 1, 2008, through March 31, 2008~~ January 31, 2009.

#### 4VAC20-720-50. Closed harvest season and areas.

It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:

1. All public oyster grounds and unassigned grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River, except those areas listed in 4VAC20-720-40, are closed: October 1, ~~2007~~ 2008, through September 30, ~~2008~~ 2009.

2. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: May 1, ~~2008~~ 2009, through September 30, ~~2008~~ 2009.

3. All public oyster grounds and unassigned grounds on the Seaside of Eastern Shore: for clean cull oysters, October 1, 2008, through October 31, 2008, and February March 1, ~~2008~~ 2009, through September 30, ~~2008~~ 2009, and for seed oysters, all year.

4. The following areas shall be closed from ~~January 1, 2008, October 1, 2008, through November 30, 2008, and March 1, 2009, through September 30, 2008~~ 2009: Rappahannock River ~~Areas 8 and~~ Area 9; the ~~Nomini River Hand Scrape Area~~ Great Wicomico River (Hand Scrape Area); Deep Rock Patent Tong Area (Lower Chesapeake Bay); the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); and the York River and Mobjack Bay Hand Scrape Area Areas.

5. The Rappahannock River Rotation ~~Areas 1 and 6~~ Area 2: ~~December 1, 2007~~ October 1, 2008, through November 30, 2008, and February 1, 2009, through September 30, 2008 2009. Rotation Area 4: December 1, 2008, through January 31, 2009, and April 1, 2009, through September 30, 2009.

6. Tangier - Pocomoke Sounds Rotation Area 4 2: October 1, ~~2007~~ 2008, through November 30, ~~2007~~ 2008, and March 1, ~~2008~~ 2009, through September 30, ~~2008~~ 2009.

7. The James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): ~~January 1, 2008, through January 31, 2008, and April 1, 2008, October 1, 2008, through October 31, 2008, and February 1, 2009, through September 30, 2008~~ 2009.

#### 4VAC20-720-60. Day and time limit.

A. It shall be unlawful to take, catch or possess oysters on Saturday and Sunday from the public oyster grounds or

unassigned grounds in the waters of the Commonwealth of Virginia, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest. The presence of any gear normally associated with the harvesting of oysters on board the boat or other vehicle used during any harvesting under this exception shall be prima facie evidence of violation of this chapter.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in subdivisions 1, 3, 5, and 6 of 4VAC20-720-40, except as described in 4VAC20-720-106. In addition, it shall be unlawful for any boat with an oyster dredge aboard to leave the dock until one hour before sunrise or return to the dock after sunset, and it shall be unlawful for any boat with a hand scrape aboard to leave the dock until one-half hour before sunrise or return to the dock after sunset.

C. It shall be unlawful for any person to harvest or attempt to harvest oysters in the Rappahannock River Rotation Areas ~~4 and 6~~ 2 and 4 prior to 7 a.m. and after 1 p.m.

~~D. It shall be unlawful for a boat with an oyster dredge aboard to leave the dock until one hour before sunrise or return to the dock after sunset.~~

~~E. It shall be unlawful for a boat with a hand scrape aboard to leave the dock until one half hour before sunrise or return to the dock after sunset.~~

#### 4VAC20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed Areas, including the Deep Water Shoal State Replenishment Seed Area, and the Rappahannock River Area 9, except by hand or ordinary tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

B. It shall be unlawful to harvest oysters from the seaside of the Eastern Shore, except by hand.

C. It shall be unlawful to harvest oysters in the Rappahannock River Rotation ~~Area 1 or 6~~ Areas 2 and 4, Rappahannock River Area 8; James River Hand Scrape Area, Thomas Rock Hand Scrape Area, ~~Nomini River Hand Scrape Area,~~ Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area), and York River, Great Wicomico and Mobjack Bay Hand Scrape Area Areas, except by hand scrape.

D. It shall be unlawful for any person to have more than one hand scrape on board any boat that is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand scrape.

E. It shall be unlawful to harvest oysters from the Tangier – Pocomoke Rotation Area  $\pm$  2, except by a standard oyster dredge.

F. It shall be unlawful to harvest oysters from the Deep Rock Patent Tong Area, except by a standard oyster patent tong.

**4VAC20-720-75. Gear license.**

A. It shall be unlawful for any person to harvest shellfish, from the hand scrape areas in the Rappahannock River, James River, Upper Chesapeake Bay, York River, Mobjack Bay and Nomini River Area Great Wicomico River, unless that person has first obtained a current hand scrape license.

B. It shall be unlawful for any person to harvest shellfish, with a dredge from the public oyster grounds in the Tangier – Pocomoke Sounds Rotation Area  $\pm$  2, unless that person has first obtained a current dredge license.

C. It shall be unlawful for any person to harvest shellfish, with a patent tong from the public oyster grounds in the Deep Rock Patent Tong Area unless that person has first obtained a current patent tong license.

**4VAC20-720-80. Quotas and harvest limits.**

A. In the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, there shall be an oyster harvest quota of 80,000 bushels of seed oysters. It shall be unlawful for any person to harvest seed oysters from the James River Seed Area after the 80,000 bushel quota has been reached. In the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, there shall be an oyster harvest quota of 15,000 bushels of clean cull oysters. It shall be unlawful for any person to harvest clean cull oysters from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, after the 15,000 bushel quota has been reached.

B. The lawful daily limit of clean cull oysters harvested from the areas as described in subdivisions 3, 4, and 6 of 4VAC20-720-40 shall be determined by the number of registered commercial fishermen licensees on board the vessel multiplied by eight bushels. It shall be unlawful to possess on board any vessel or to land more than the daily limit of clean cull oysters.

C. In the Tangier - Pocomoke Sounds Rotation Area  $\pm$  2, where harvesting is allowed by dredge, there shall be a harvest limit of eight bushels per registered commercial fisherman licensee on board the vessel. It shall be unlawful for any registered commercial fisherman licensee to possess more than eight bushels per day. No blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

D. Harvesters who export the oysters to an out-of-state market or do not sell the oysters to a licensed and Department

of Health certified Virginia buyer but sell the oysters directly to the public for human consumption shall report oysters harvested on a daily basis and pay oyster taxes weekly.

**4VAC20-720-95. Harvesting permit required for the Rappahannock River Rotation Areas 1 through 6.**

A harvesting permit is required for the Rappahannock River ~~rotation areas~~ Rotation Areas 1 through 6. Included with this permit will be a map of the two rotation areas that are open for harvesting in any given year ~~and a culling stick specific to management provisions for these areas~~. It shall be unlawful for any person to harvest or attempt to harvest oysters from the Rappahannock River Rotation Areas 1 through 6 without first obtaining and having on board a harvest permit; with a map of lower Rappahannock Rotation Areas 1 through 6, and culling stick specific to these areas that are open for harvesting in any given year.

**4VAC20-720-100. Seed oyster planting procedures.**

A. The marine police officer at the point of seed harvest may require that an officer be present during the seed planting. When this is required, it will be specified on the seed transfer permit. If an officer is required to be present at planting, the planter shall notify the ~~law enforcement~~ marine police officer in the area prior to planting. It shall be unlawful for the permittee or planter to plant the oysters without a marine police officer being present.

B. The planting of seed oysters shall consist of spreading the oysters loosely on the bottom of the planting area. It shall be unlawful to plant seed oysters in any manner except by spreading the oysters loosely on the bottom.

C. Seed oysters shall be placed on a designated and marked area of the private ground from which said oysters are not to be removed until after March 31. It shall be unlawful to reharvest these seed oysters prior to April 1.

**4VAC20-720-106. Public health and warm water harvest restrictions.**

A. It shall be unlawful for any person to have any cat, dog, or other animal on board a vessel during the harvest of oysters.

B. From May 1 through September 30, any vessel used for the harvest of oysters for human consumption from either public or private grounds shall have shading over the area that serves as storage for the oysters (except as described in subsection C of this section), and all oysters in the vessel shall be offloaded every day.

C. From May 1 through September 30, any vessel used for the harvest of oysters for human consumption that are placed in an aquaculture container completely covered by a lid or top, shall not be required to have shading over that container.

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D. From ~~May 1 June 15~~ through ~~September 30~~ August 31, it shall be unlawful for any person, or person aboard a vessel, to leave the dock or shore prior to one hour before sunrise to harvest or attempt to harvest oysters from ~~public or private~~ grounds.

E. From May 1 through June 14, it shall be unlawful to harvest oysters for human consumption from public or private grounds after 11 a.m., and oysters harvested before 11 a.m. shall be refrigerated by 11 a.m. that same day.

~~E. F.~~ From ~~May 1 June 15~~ through ~~September 30~~ August 31, it shall be unlawful to harvest oysters for human consumption from public or private grounds after 10 a.m., and oysters harvested before 10 a.m. shall be refrigerated by 10 a.m. that same day, ~~except as described below.~~

G. From September 1 through September 30, it shall be unlawful to harvest oysters for human consumption from public or private grounds after 12 p.m., and oysters harvested before 12 p.m. shall be refrigerated by 12 p.m. that same day.

~~1. This H. Subsections E, F, and G of this section shall not apply to the harvest of seed oysters or the customary husbandry processes associated with aquaculture of oysters.~~

~~2. I. Oysters may be harvested after 40 a.m. the end of the designated harvesting time in subsections E, F, and G of this section provided there is a Virginia Department of Health, Division of Shellfish Sanitation-approved refrigeration system or ice storage area for the oysters on board the harvest vessel that is in use for cooling oysters at all times after 40 a.m. or the total time expended on harvesting those oysters does not exceed two hours from start of harvest to refrigeration of those oysters, and there is verifiable documentation, such as a log book or GPS trip log that corresponds to that harvesting event.~~

~~3. The total time expended on harvesting those oysters does not exceed two hours from start of harvest to refrigeration of those oysters, and there is verifiable documentation, such as a log book or GPS trip log that corresponds to that harvesting event.~~

VA.R. Doc. No. R09-1600; Filed September 29, 2008, 7:27 a.m.

## Emergency Regulation

Title of Regulation: **4VAC20-751. Pertaining to the Setting and Mesh Size of Gill Nets (amending 4VAC20-751-10, 4VAC20-751-15, 4VAC20-751-20).**

Statutory Authority: §§28.2-201 and 28.2-210 of the Code of Virginia.

Effective Date: September 29, 2008, through October 28, 2008.

Agency Contact: Jane Warren, 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 [betty.warren@mrc.virginia.gov](mailto:betty.warren@mrc.virginia.gov).

### Preamble:

*The amendment makes it unlawful for any person to place any unattended gill net within 500 yards of the mean high-water mark, on the ocean side of Northampton and Accomack counties, north of a line, beginning at the southern most point of Smith Island and thence extending due east to the three-mile limit line.*

### 4VAC20-751-10. Purpose.

The purpose of this emergency chapter is to reduce the out-of-season by-catch of American shad and to preclude the harvest of coastal migratory striped bass, thereby reducing injuries and mortalities to these two species. This emergency chapter is also intended to reduce the strandings and mortalities of threatened and endangered sea turtles.

### 4VAC20-751-15. Definitions.

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

"Unattended gill net" means any gill net set in Virginia tidal waters, described in 4VAC20-751-20 E, that is located more than one mile from the licensee of that gill net.

### 4VAC20-751-20. Gill net mesh sizes, restricted areas, and season.

A. From January 1 through March 25 of each year, it shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh size between 3-3/4 inches and six inches within the restricted areas as set forth below, except that during the month of February any legally licensed fisherman may place, set, or fish any gill net with a stretched mesh size from five inches to six inches within the restricted areas described in this subsection. From March 26 through June 15 of each year, it shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh size greater than six inches within the restricted areas set forth below, except as described in 4VAC20-252-135:

1. In James River, those tidal waters upstream of a line connecting Willoughby Spit and Old Point Comfort;
2. In Back River, those tidal waters upstream of a line connecting Factory Point and Plumtree Point;
3. In Poquoson River, those tidal waters upstream of a line connecting Marsh Point and Tue Point;
4. In York River, those tidal waters upstream of a line connecting Tue Point and Guinea Marshes;
5. In Mobjack Bay, those tidal waters upstream of a line connecting Guinea Marshes and New Point Comfort;

6. In Milford Haven, those tidal waters upstream of a line connecting Rigby Island and Sandy Point;

7. In Piankatank River, those tidal waters upstream of a line connecting Cherry Point and Stingray Point; and

8. In Rappahannock River, those tidal waters upstream of a line connecting Stingray Point to Windmill Point.

B. During the period May 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish more than 8,400 feet of gill net.

C. During the period May 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish any gill net in the Chesapeake Bay or in Virginia's portion of the Territorial Sea, that is made, set or fished in a tied-down manner, by connecting the net's head rope and foot rope with lines, which cause the net to form a pocket of webbing.

D. During the period June 1 through June 30, it shall be unlawful for any person to have aboard any vessel or to place, set, or fish any gill net with a stretched mesh greater than six inches in the Virginia portion of the Territorial Sea, south of a line connecting Smith Island Light and the three-mile limit line.

E. From June 1 through October 15, it shall be unlawful for any person to place any ~~anchored, weighted, or~~ unattended gill net, within 500 yards of the mean high-water mark, on the ocean side of Northampton and Accomack counties, north of a line, beginning at the southern most point of Smith Island and thence extending due east to the three-mile limit line.

VA.R. Doc. No. R09-1629; Filed October 28, 2008, 7:28 a.m.

**TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS**

**STATE BOARD OF CORRECTIONS**

**Final Regulation**

**REGISTRAR'S NOTICE:** The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

**Titles of Regulations:** **6VAC15-10. Public Participation Guidelines (repealing 6VAC15-10-10 through 6VAC15-10-100).**

**6VAC15-11. Public Participation Guidelines (adding 6VAC15-11-10 through 6VAC15-11-110).**

**Statutory Authority:** §§2.2-4007.02 and 53.1-5 of the Code of Virginia.

**Effective Date:** November 15, 2008.

**Agency Contact:** Janice Dow, Agency Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23235, telephone (804) 674-3303 ext: 1128, FAX (804) 674-3017, or email janice.dow@vadoc.virginia.gov.

**Summary:**

*The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.*

*This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.*

**CHAPTER 11**

**PUBLIC PARTICIPATION GUIDELINES**

**Part I**

**Purpose and Definitions**

**6VAC15-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of Corrections. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

**6VAC15-11-20. Definitions.**

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

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"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Department of Corrections, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under

consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

## Part II

### Notification of Interested Persons

#### **6VAC15-11-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

#### **6VAC15-11-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 6VAC15-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Part III  
Public Participation Procedures

**6VAC15-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final

adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

**6VAC15-11-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

**6VAC15-11-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

**6VAC15-11-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

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B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

## **6VAC15-11-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

## **6VAC15-11-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

## **6VAC15-11-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their

effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1434; Filed September 24, 2008, 9:48 a.m.

## **TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS**

### **STATE BOARD OF CORRECTIONS**

#### **Final Regulation**

**REGISTRAR'S NOTICE:** The State Board of Corrections is claiming an exemption from the Administrative Process Act pursuant to §2.2-4002 B 9 and 10 of the Code of Virginia, which exempts agency action relating to inmates of prisons or other such facilities or parolees therefrom and the custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.

**Title of Regulation:** **6VAC15-70. Standards for Community Residential Programs (amending 6VAC15-70-10 through 6VAC15-70-160).**

**Statutory Authority:** §53.1-5 of the Code of Virginia.

**Effective Date:** November 15, 2008.

**Agency Contact:** Beverly Hill-Murray, Compliance and Accreditation Unit, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23235, telephone (804) 674-3499 ext: 1145, FAX (804) 674-3587, or email beverly.hill-murray@vadoc.virginia.gov.

**Summary:**

*The amendments include requirements for an annual review of the operations manual; require procedures governing residents' money to be in compliance with current Community Corrections Operating Procedures; require the agency administrator to distribute designated documents to the governing authority annually; include fraternization procedures (per Prison Rape Elimination Act) in the list of written personnel policies approved by the governing authority; add formal training in addition to orientation as a requirement prior to an employee assuming sole responsibility for any working shift; clarify staffing schedules; amend a population count conducted by staff from every two hours to three times daily; allow random as well as monthly fire drills; and add sexual*

*abuse history (per Prison Rape Elimination Act) to the list of initial intake information form on each resident.*

**6VAC15-70-10. Definitions.**

The following words and terms when used in these standards shall have the following meaning, unless the context clearly indicates otherwise:

"Agency" means the public or private organization that has direct responsibility for the operation of a community residential program including the implementation of policy established by the governing authority.

"Agency staff" means any agency administrator, facility director, counselor, case manager, clerical worker or supervisor or others who are employed by, contract with, or volunteer services to the program.

"Community residential program" means any group home, halfway house, or other physically unrestricting facility used for the housing treatment or care of adult offenders established or operated with funds appropriated to the Department of Corrections from the state treasury and maintained or operated by any political subdivision, combination of political subdivisions or privately operated agency within the Commonwealth.

"Contraband" means items prohibited on facility premises by statute, regulation, or policy.

"Facility" means the physical plant.

"Foot-candle" means a unit for measuring the intensity of illumination defined as the amount of light thrown on a surface one foot away from the light source.

"Furlough" means a written approval that allows a resident to leave the facility for a period of time, including overnight.

"Governing authority" means those persons responsible for facilitating communication with program administrators, establishing policy, exploring problems, ensuring conformity to legal and fiscal requirements, and implementing community residential programs.

"Pass" means a written approval that allows a resident to leave the facility for a period of time, other than overnight.

"Program" means the plan or system of residential services of a public or private agency.

"Recognized health authority" means health authority as defined by the American Red Cross or the American Heart Association.

"Resident" means an individual participating in a community residential program under the purview of a contractual agreement.

**6VAC15-70-40. Organization and administration.**

A. The agency shall appoint a governing authority that serves as a link between the residential program and the community.

B. The governing authority of the public or private community residential program shall hold meetings at least quarterly with the community residential program administrator in order to facilitate communication, establish policy, explore problems, ensure conformity to legal and fiscal requirements, and implement community residential programs.

C. A single administrative officer who reports directly to the governing authority shall manage the agency and its programs.

D. The agency shall have an operations manual which summarizes approved methods of implementing agency policies and procedures and provides details for daily operations of the program that is available to all employees.

E. The governing authority or agency administrator shall annually review the operations manual ~~at least every two years~~ and update when necessary.

F. The administrator or designated agency staff shall monitor implementation of policies and procedures set forth in the operations manual through a review that occurs at least every 12 months.

G. There shall be a written policy that persons connected with the agency shall not use their official position to secure privileges or advantages for themselves.

H. Any community residential program operated exclusively by the Department of Corrections shall have a written policy ~~that ensures~~ to ensure that ~~the program~~ it conforms to governmental statutes and regulations relating to campaigning, lobbying and political practices.

I. The agency shall have a current organizational chart that accurately reflects the structure of authority and accountability within the agency.

J. Agency staff shall identify and document the agency's tax status with the Internal Revenue Service.

K. The agency shall have by-laws, approved by the governing authority, which shall be filed with the appropriate local, state or federal body.

L. The agency by-laws for the governing authority shall include:

1. Membership;
2. Size of the governing authority;
3. Method of selection;
4. Terms of office;

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5. Duties and responsibilities of officers;
6. Times authority will meet;
7. Committees;
8. Quorums;
9. Parliamentary procedures;
10. Recording of minutes;
11. Method of amending by-laws;
12. Conflict of interest provisions; and
13. Specification of the relationship of the agency administrator to the governing authority.

M. A permanent record shall be kept of all ~~meetings~~ meeting minutes of the governing authority.

## **6VAC15-70-50. Fiscal management.**

A. The agency administrator shall prepare an annual written budget of anticipated revenues and expenditures which shall be approved by the governing authority.

B. The agency administrator shall participate in budget reviews conducted by the governing authority.

C. Written procedures shall govern revisions ~~in~~ to the budget.

~~D. Written fiscal procedures shall provide for accounting of all income and expenditures.~~

~~E. D.~~ D. Written procedure shall govern the handling and use of residents' money. This procedure shall comply with current ~~Department of Corrections~~ community corrections operating procedures.

~~F. E.~~ E. An annual independent financial audit of the agency shall be performed by a certified public accounting firm or a governmental auditing agency.

~~G. Agency staff~~ F. The agency administrator shall prepare and distribute the following documents to its governing authority and the Department of Corrections ~~upon request~~ annually:

1. Annual budget;
2. Income and expenditure statements;
3. Funding source financial reports; and
4. Independent audit report.

~~H. G.~~ G. Written fiscal policies and procedures, which are adopted by the governing authority shall include at a minimum:

1. Internal controls;
2. Petty cash;

3. Bonding;
4. Signature control on checks;
5. Resident funds; ~~and~~
6. Employee expense reimbursement; and
7. Accounting of income and expenditures.

~~I. H.~~ H. The agency shall have insurance coverage which includes coverage for:

1. Physical plant;
2. Equipment;
3. Personal and property injury to employees, residents and third parties; and
4. Comprehensive general liability.

~~J. I.~~ I. Written procedure shall govern vendor selection and purchasing and requisitioning of supplies and equipment.

~~K. J.~~ J. There shall be written procedure for documenting and authorizing compensation to consultants.

## **6VAC15-70-60. Personnel.**

A. Written personnel policies and procedures, which are approved by the governing authority, shall include at a minimum:

1. Recruitment;
2. Employment practices and procedures including in-service training and staff development;
3. Promotion;
4. Fraternization (per Prison Rape Elimination Act);
- 4- 5. Grievance and appeal;
- 5- 6. Personnel records and contents;
- 6- 7. Benefits;
- 7- 8. Holidays;
- 8- 9. Leave;
- 9- 10. Hours of work;
- 10- 11. Salaries;
- 11- 12. Disciplinary action procedures; and
- 12- 13. Termination and resignation.

~~B. Agency staff~~ Written personnel policies and procedures shall ~~make be made~~ be made available to all employees ~~a copy of all personnel policies and procedures.~~ Each employee shall confirm in writing the availability and review of current policies and procedures.

C. The agency administrator shall maintain written job descriptions and job qualifications for all positions in the agency.

D. Confidentiality of personnel records shall be governed by written procedure.

E. Written procedure shall allow an employee to challenge information in their personnel file and have it corrected or removed if proven inaccurate.

F. All employees shall have a performance evaluation every 12 months. This evaluation shall be in writing and shall be based upon defined criteria. Each performance evaluation shall be reviewed and discussed with the employee.

G. Agency staff shall provide all new employees orientation, to include a review of all policies and procedures, beginning the first day of employment and concluding within 30 days. The employee shall sign and date a statement that orientation has been completed.

H. An employee shall not assume sole responsibility for any working shift prior to the completion of orientation and formal training.

I. The agency shall not discriminate or exclude ~~from employment~~ women from working in men's programs ~~or nor~~ men from working in women's programs.

J. The agency shall comply with all governmental regulatory requirements related to employment and personnel practices.

K. Written policy shall govern experience and education equivalents necessary for employment.

L. Criminal records checks shall be performed on all employees prior to hiring. The Department of Corrections ~~regional administrator~~ regional director must provide written authorization prior to the hiring of any exoffender who has been convicted of an offense for which a sentence of 12 months or more could have been imposed.

Part III  
Facility

**6VAC15-70-70. Facility operation.**

A. The agency administrator shall ensure that the facility conforms to all applicable laws, codes and zoning ordinances ~~or, through legal means, attempts to comply with or change such laws, codes, or zoning ordinances.~~

B. The agency administrator shall ensure that the facility complies with applicable state and local building codes.

C. The agency administrator shall ensure that the facility complies with sanitation and health codes of the state or local jurisdiction. Any sanitation and health deficiencies shall have a documented plan of corrective action that has been approved by the appropriate state or local inspector.

D. The agency administrator shall ensure that the facility complies with the regulations of the state or local fire safety authority that has jurisdiction over the facility. Any fire safety deficiencies shall have a documented plan of corrective action that has been approved by the appropriate state or local inspector.

E. Smoke detectors shall be installed, operational and inspected as recommended by the fire marshal or fire department representative.

F. Automatic, permanent emergency lights shall be installed, operational, and inspected as recommended by the fire marshal or fire department representative.

G. Agency staff shall have a housekeeping and maintenance plan. The facility shall be clean and in good repair.

H. The facility shall be located within 10 city blocks of public transportation or other means of transportation shall be available.

I. Sleeping quarters and bathroom areas shall have a minimum of 20 foot-candles of light.

J. Sleeping quarters shall be properly ventilated.

K. Sleeping quarters shall have a minimum of 60 square feet of floor space per resident.

L. Male and female residents shall not occupy the same sleeping quarters.

M. Each resident shall be provided, at a minimum, the following:

1. Bed;
2. Mattress and pillow;
3. Supply of bed linens;
4. Chair; and
5. Closet or locker space.

N. Residents shall be afforded space in the facility for:

1. Private counseling;
2. Group meetings; and
3. Visitation.

O. The facility shall have a minimum of one toilet and one shower or bathing facility for every 10 residents.

P. The facility shall have a minimum of one wash basin for every six residents.

~~Q. The facility shall have a minimum of one shower or bathing facility for every 10 residents.~~

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~~R. Q.~~ The facility shall have one washer and one dryer for every 16 residents, or equivalent laundry service shall be available in the immediate vicinity of the facility.

~~S. R.~~ Rules and regulations pertaining to residents shall be conspicuously posted in the facility.

~~T. S.~~ Written procedures shall govern transportation of residents that ensure at a minimum:

1. Those staff providing transportation shall have a valid operator's license;
2. Reporting of accidents; and
3. The vehicle's operation is in accordance with all state and local laws or ordinances.

~~U. T.~~ Reasonable accommodations shall be available for the disabled.

## **6VAC15-70-80. Staffing.**

A. The staffing ~~pattern of the facility shall concentrate agency staff when the majority of residents are available to use facility resources~~ schedule shall be formulated to accommodate the best possible ratio of staff to residents.

B. There shall be at least one agency staff person on facility premises who is ~~awake, available and responsive to residents' needs~~ available to the residents 24 hours a day.

## **6VAC15-70-90. Resident movement.**

A. Resident movement into and out of the facility shall be governed by written procedure. The procedure shall include, at a minimum, a sign-in and sign-out system that includes:

1. Destination and phone number;
2. Reason for signing out;
3. Time and date out;
4. Expected time of return;
5. Resident's signature at time of departure;
6. Staff signature or initials at time of departure;
7. Date of return;
8. Time of return;
9. Resident's signature at time of return; and
10. Staff signature or initials at time of return.

B. Passes and furloughs shall be issued in conformance with Department of Corrections operating procedures.

C. Movement within the facility shall be governed by procedures that provide for:

1. An account of the residents' whereabouts in the facility at all times;

2. A population count, by resident name, conducted by staff ~~every two hours~~ three times daily;

3. Visual contact with each resident in the facility during the count; and

4. Count results documented and initialed by staff.

D. Verification of a resident's whereabouts when not in the facility shall be governed by written procedures. The forms of verification may include but not be limited to:

1. Random telephone contacts to the authorized destination;
2. Documentation from authorized destination that includes:
  - a. Signature of individual visited;
  - b. Date and time of visit; and
3. Random on-site visits to authorized destination.

## **6VAC15-70-100. Special procedures.**

A. There shall be written emergency procedures that shall include the following:

1. Fire;
2. Evacuation;
3. Bomb or bomb threat;
4. Hostage;
5. Disturbances, which at a minimum include riots, assaults, and fights;
6. Deaths;
7. Power failure;
8. Loss of heat;
9. Loss of water;
10. Escape or absconding; and
11. Employee work stoppage.

B. Fire emergency procedures shall be posted conspicuously in the facility.

C. Agency staff shall conduct and document monthly and random emergency fire drills, including evacuation of residents.

D. No resident or group of residents shall be in a position of control or authority over other residents.

E. Written procedure shall restrict the use of physical force to instances of justifiable self-protection, protection of others, and the minimum degree necessary to control the situation.

F. Agency ~~staff~~ administrator shall maintain and make available to all employees written procedures for conducting

searches of residents, agency staff, visitors and the facility in order to control contraband.

G. Written procedures shall govern the disposal of contraband.

H. Written procedures for reporting absconders shall comply with Department of Corrections operating procedures.

I. Written policy shall prohibit the carrying and use of weapons in the facility ~~by both agency staff and residents.~~

J. Agency staff shall maintain a log of occurrences and daily events that shall:

1. Be kept in a bound book for permanent ~~residence~~ retention;
2. Be written legibly in ink;
3. At each entry, contain the full names, at least once, of the residents involved in the events;
4. Document a briefing of occurrences and important events between outgoing and incoming staff; ~~and~~
5. Contain a signature or initials of staff at the conclusion of their shift; and
6. Become a legal document of the facility and shall be maintained as such.

Part IV  
Program Services

**6VAC15-70-110. Intake.**

A. Criteria for acceptance into the program and intake shall be governed by written procedure.

B. Agency staff shall complete an initial intake information form on each resident admitted which, unless prohibited by statute, includes at a minimum:

1. Name;
2. Address;
3. Date of birth;
4. Social Security number;
5. Current photograph;
6. ~~Sex~~ Gender;
7. Race or ethnic origin;
8. Reason for referral;
9. Whom to notify in case of emergency;
10. Date information gathered;
11. Signature of both ~~interviewee~~ resident and employee gathering information;

12. Name and telephone number of referring agency or committing authority;

13. Special medical problems or needs;

14. Personal physician, if applicable; ~~and~~

15. Legal status, including jurisdiction, and length and conditions of sentence-; and

16. Sexual abuse history (per Prison Rape Elimination Act).

C. Agency staff shall distribute a copy of the criteria for acceptance into the program and intake procedures to referral agencies and interested parties.

D. Agency staff shall provide in writing to the referral agency and prospective resident, reasons for nonacceptance into the program.

E. At the time of intake, agency staff shall review goals, services available, program rules, and disciplinary actions with the resident. This procedure shall be documented by employee and resident signatures.

F. Written procedure shall govern the assignment of case management of each resident to a staff member.

G. Where a language or literacy problem exists which ~~can~~ may lead to a resident's misunderstanding of agency rules and regulations, assistance shall be provided to the resident either by staff or by another qualified individual under the supervision of a staff member.

**6VAC15-70-120. Programs.**

A. Agency staff shall design a personalized program with and for each resident that includes:

1. Measurable criteria of expected behavior and accomplishments;
2. Time schedule for achievement; and
3. ~~Staff and resident signatures~~ Signatures of employee and resident.

B. Agency staff shall review changes in the personalized program with the resident and document this procedure with ~~staff~~ employee and resident signatures.

C. Agency staff shall review resident progress with the resident every two weeks. The outcome of each review shall be documented in the resident's case file.

D. Written procedures shall provide residents increasing involvement with family and community activities prior to final release.

E. Residents' attendance and participation in religious services and activities shall be voluntary. Residents shall be permitted to attend religious services of their choice in the

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community once eligible to go out on pass and to receive visits from representatives of their respective faiths religious affiliation.

F. Written procedures shall ensure that residents receive approved visitors during established visiting hours, except where there is substantial evidence that a visitor poses a threat to the safety of the resident or the security of the facility.

G. ~~Agency staff~~ The agency program shall provide for recreational and leisure time activities.

H. Agency staff shall provide, or make referrals when needed, for the following services:

1. Supervision in the community;
2. Shelter;
3. Food service (where applicable);
4. Financial assistance;
5. Individual counseling;
6. Assistance with transportation;
7. Medical health services;
8. Mental health services;
9. Vocational evaluation, counseling and training;
10. Employment counseling and placement;
11. Education or training counseling and placement; and
12. Group counseling.

I. Agency staff shall use community resources, either through referrals for service or by contractual agreement, to provide residents with the services to become self-sufficient.

J. Agency staff shall ensure that residents' mail, both incoming and outgoing, is not read or withheld and that inspection of residents' mail for money or contraband shall occur in the presence of the resident.

K. Resident grievances shall be governed by written procedures that shall include an appeals process.

## **6VAC15-70-130. Case records.**

A. Agency staff shall maintain a case record for each resident in which all significant decisions and events are recorded. The records shall include, at a minimum, but are not limited to, the following information:

1. Initial intake information form;
2. Case information from referral source;
3. Case and social history;
4. Emergency contact information;
5. Medical record, when available;

6. Individual plan or program, group and family counseling ~~shall be documented~~;

7. Signed release of information forms;

8. Evaluation and progress reports;

9. Current employment data;

10. ~~Program rules and disciplinary policy, signed by resident and agency staff~~ Documentation that program rules and policies have been reviewed with the resident;

11. Grievance and disciplinary record;

12. Subsequent referrals to other agencies by the program; and

13. Termination summary.

B. Agency staff shall make entries into the case records and date and initial each entry.

C. Case records shall be marked "confidential" and maintained in locked file cabinets or rooms to minimize the possibility of theft, loss, destruction or unauthorized use.

D. Supervisory staff or a designee shall review case records monthly to ensure that the case is current and accurate.

E. The confidentiality of case records shall be maintained in accordance with federal and state laws. Written procedures shall govern access to case records and designate personnel responsible for release of resident information.

F. Written procedure shall govern the retention and destruction of case records in accordance with state law.

G. Agency staff shall provide a "Release of Information Consent Form" which at a minimum complies with applicable federal and state laws and includes:

1. Person, agency or organization requesting information;
2. Person, agency or organization releasing information;
3. Specific information to be disclosed;
4. Purpose or need for the information;
5. Expiration date;
6. Date consent form is signed;
7. Signature of the resident; and
8. Signature of individual witnessing resident's signature.

## **6VAC15-70-160. Medical care and health services.**

A. Agency staff shall maintain first aid equipment approved by a recognized health authority for medical emergencies.

B. Written procedure shall ensure perpetual availability of first aid equipment and supplies.

C. Agency staff shall maintain a current inventory control list of first aid equipment and supplies.

D. One ~~agency staff~~ employee on each shift of the community residential program shall be trained in emergency first aid procedures, including cardiopulmonary resuscitation.

E. Routine medical ~~services~~ care and 24-hour emergency medical services shall be available to residents.

F. At the time of the ~~offender's~~ resident's referral, a medical assessment shall be completed to determine if the resident has any special medical needs. Agency staff shall be made aware of ~~offenders'~~ residents' special medical problems.

G. Written procedures shall provide for medical examination of any ~~agency staff~~ employee or resident suspected of having a communicable disease.

H. Written procedures shall address the management of serious and infectious diseases for residents and agency staff.

I. When a urine ~~surveillance~~ screening program is in effect, written procedures shall govern collection of samples and interpretation of results.

J. Written procedures shall govern the possession and control of prescribed medications and over-the-counter ~~drugs~~ medication.

VA.R. Doc. No. R09-1632; Filed September 24, 2008, 9:46 a.m.

**DEPARTMENT (BOARD) OF JUVENILE JUSTICE**

**Notice of Extension of Emergency Regulation**

**Title of Regulation: 6VAC35-20. Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (amending 6VAC35-20-37).**

Statutory Authority: §§16.1-233 and 66-10 of the Code of Virginia.

Effective Dates: August 1, 2007, through January 31, 2009.

The Department of Juvenile Justice requested an extension of the emergency regulations, 6VAC35-20, pursuant to §2.2-4011 of the Code of Virginia to allow time for the permanent fast-track regulations to complete the executive review process and the requirements of the Administrative Process Act. The emergency regulations were published in 23:25 VA.R. 4180-4181 August 20, 2007 (<http://legis.state.va.us/codecomm/register/vol23/iss25/v23i25.pdf>) with effective dates of August 1, 2007, through July 31, 2008.

The Governor approved the department's request to extend the expiration date of the emergency regulations for six months as provided in §2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through January 31, 2009.

Agency Contact: Deron Phipps, Regulatory Coordinator, Department of Juvenile Justice, Dept of Juvenile Justice, PO Box 1110, Richmond, VA 23218-1110, telephone (804) 746-6407, FAX (804) 371-0773, or email [deron.phipps@djj.virginia.gov](mailto:deron.phipps@djj.virginia.gov).

VA.R. Doc. No. R07-639; Filed September 16, 2008, 10:11 a.m.

**Fast-Track Regulation**

**Title of Regulation: 6VAC35-140. Standards for Juvenile Residential Facilities (adding 6VAC35-140-46).**

Statutory Authority: §§16.1-309.9, 66-10 and 66-25.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until November 12, 2008.

Effective Date: December 12, 2008.

Agency Contact: Janet P. VanCuyk, Legislative and Regulatory Coordinator, Department of Juvenile Justice, 700 E. Franklin Street, Richmond, VA 23218-1110, telephone (804) 371-4097, FAX (804) 371-0773, or email [janet.vancuyk@djj.virginia.gov](mailto:janet.vancuyk@djj.virginia.gov).

Basis: The Board of Juvenile Justice is entrusted with general authority to promulgate regulations by §66-10 of the Code of Virginia, which states the board may "promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department." Additional statutory provisions address the board's responsibility to promulgate regulations governing residential facilities. These are §§16.1-309.9, governing facilities receiving funding through the Virginia Juvenile Community Crime Control Act (Chapter 11, Article 12.1 of Title 16.1 of the Code of Virginia); 16.1-322.5, governing local or regional detention homes; and 66-24, governing community group homes and other residential facilities.

Purpose: Juvenile residential facilities regulated by the Board of Juvenile Justice currently must meet the requirements of the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11) and the Standards for Juvenile Residential Facilities (6VAC35-140). 22VAC42-11-830 of the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11) regulates the staff supervision of residents in all children's residential facilities. This provision specifies that "The Board of Juvenile Justice shall determine the supervision ratios for facilities regulated by the Department of Juvenile Justice." No regulations or policies adopted by the Board of Juvenile Justice set the required staffing ratio for the nonsecure facilities it regulates.

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Prior to December 27, 2007, when the Standards for Interdepartmental Regulation of Children's Residential Facilities were amended, all nonsecure children's residential facilities were subject to the same staffing ratio, which required each facility to have one staff person supervising every 10 residents during scheduled awake hours. As amended, the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11), 6VAC42-11-830 provides that facilities regulated by the Departments of Education, Social Services, and Mental Health, Mental Retardation, and Substance Abuse Services must maintain a staffing ratio of one staff person for each eight residents. 22VAC42-11-830 specifically excludes facilities regulated by the Board of Juvenile Justice and provides that the Board of Juvenile Justice shall determine the applicable supervision ratios. This exclusion applies to both secure and nonsecure facilities regulated by the board.

6VAC35-140-545 sets the staffing pattern for secure facilities regulated by the Board of Juvenile Justice. No regulations or policies adopted by the Board of Juvenile Justice set the required staffing ratio for the nonsecure facilities it regulates. This regulation is essential to protect the health, safety, or welfare of both juveniles who reside in juvenile residential facilities and the staff who work there. Absent this regulation, an operator of a nonsecure residential facility regulated by the Board of Juvenile Justice may elect to set a higher staffing ratio that could potentially adversely affect the care of the residents and result in the residents' needs being unmet. This proposed regulatory action would close that gap.

Rationale for Using Fast-Track Process: This regulation is being promulgated through the fast-track process because it is expected to be noncontroversial as the proposed section: (i) adopts the prior regulatory requirements (which were required of these facilities before the December 2007 amendments to the Standards for Interdepartmental Regulation of Children's Residential Facilities); (ii) makes current practice a regulatory requirement (as the affected facilities have continued to operate under the prior regulatory requirement); (iii) corrects a gap in the current regulatory scheme; and (iv) results in continued uniform staffing patterns in these facilities throughout the Commonwealth.

Under the current regulatory scheme, there is a gap in which no staffing ratio has been set for nonsecure residential facilities regulated by the Board of Juvenile Justice. The proposed section would adopt the same language governing the staffing pattern for secure residential facilities regulated by the Board of Juvenile Justice and apply it to the nonsecure juvenile residential facilities regulated by the board.

This staffing ratio is also consistent with the ratio required by the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11) prior to its amendment in December 2007. The proposed staffing ratio is different from the general rule currently governing residential

programs regulated by the Departments of Education, Social Services, and Mental Health, Mental Retardation, and Substance Abuse Services. However, 22VAC42-11-830 of the Standards for the Interdepartmental Regulation of Children's Residential Facilities allows each of these boards to, upon request of a provider, approve a ratio that allows a higher number of residents to be supervised by one staff if the requested staffing ratio will not adversely affect the care of the residents and if the residents' needs will continue to be met on an individual as well as a group basis. The department asserts that the requested staffing ratio will not adversely affect the care of the residents and the residents' needs will continue to be met on an individual as well as a group basis and thus expects this regulatory action to be noncontroversial.

Substance: This action will create a new section (6VAC35-140-46) in the Board of Juvenile Justice's Standards for Juvenile Residential Facilities (6VAC35-140). The proposed section adopts the prior regulatory requirements (which were required of these facilities before the December 2007 amendments to the Standards for Interdepartmental Regulation of Children's Residential Facilities), will make current practice a regulatory requirement, and will result in continued uniform application in these facilities throughout the Commonwealth.

This new section sets the staffing pattern for nonsecure facilities regulated by the board. The amendment sets the staffing ratio at one staff for 10 residents during scheduled awake hours (except independent living programs where it is set at one to 15) and one staff for every 16 residents during scheduled sleep hours. Additionally, when the residents are sleeping, at least one staff member must be in each building and on each floor where residents sleep (except independent living programs).

Issues: 22VAC42-11-830 of the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11) provides that facilities regulated by the Departments of Education, Social Services, and Mental Health, Mental Retardation, and Substance Abuse Services must maintain a staffing ratio of one staff person for each eight residents. 22VAC42-11-830 specifically excludes facilities regulated by the Board of Juvenile Justice and provides the Board of Juvenile Justice shall determine the applicable supervision ratios. This exclusion applies to both secure and nonsecure facilities regulated by the board.

6VAC35-140-545 sets the staffing pattern for secure facilities regulated by the Board of Juvenile Justice. No regulations or policies adopted by the Board of Juvenile Justice set the required staffing ratio for nonsecure facilities it regulates. Thus, the proposed regulation is essential to protect the health, safety, or welfare of both juveniles who reside in juvenile residential facilities and the staff who work there. Absent this regulation, an operator of a nonsecure residential

facility regulated by the Board of Juvenile Justice may elect to set a higher staffing ratio that could potentially adversely affect the care of the residents and result in the residents' needs being unmet. This proposed regulatory action could close that gap.

Thus, the proposed provision is advantageous to the public because it provides additional protections for the health, safety, and welfare of the residents in juvenile residential facilities regulated by the Board of Juvenile Justice.

There are no known disadvantages to this regulation.

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

Summary of the Proposed Amendments to Regulation. The Board of Juvenile Justice proposes to adopt staffing ratios for non-secure juvenile residential facilities.

Result of Analysis. The benefits likely exceed the costs for this proposed action.

Estimated Economic Impact. Prior to December, 2007, the Standards for Interdepartmental Regulation of Children's Residential facilities set staffing ratios for non-secure juvenile residential facilities. Under Interdepartmental Regulations, most of these facilities maintained a staff to child ratio of at least one staff member for every ten children during hours when the children were awake. During sleeping hours, the general staff to child ratio had to be, at most, one to sixteen. Of the staff required during sleeping hours: 1) at least one staff member had to be on duty in each building where children were sleeping and 2) there had to be at least one staff member on duty on floors where children were sleeping for every thirty children on that floor.

Under pre-December 2007 Interdepartmental Regulations, independent living programs had different staffing ratio requirements. During waking hours independent living programs had to have at least one staff member on duty for every fifteen teenagers/young adults. There were no staffing requirements for independent living programs during traditional sleeping hours.

In December 2007 new Interdepartmental Regulations were promulgated that allowed the Board of Juvenile Justice to determine staffing ratios for its own facilities. The Board of Juvenile Justice now proposes to adopt staffing ratios that were set by pre-December 2007 Interdepartmental Regulations. These staffing ratios represent current practice so there will likely be no costs that will be accrued on account of these proposed standards. To the extent that any interested parties may have been unsure as to what staffing standards are, promulgating these standards will provide the benefit of clarity.

Businesses and Entities Affected. The Department of Juvenile Justice reports that this regulatory action will affect 29 non-

secure juvenile residential facilities. Some of these facilities are private, for-profit operations and would, therefore, qualify as small businesses.

Localities Particularly Affected. No locality will be particularly 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 Department of Juvenile Justice concurs with the economic impact analysis as submitted by the Department of Planning and Budget.

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## Summary:

*The amendment adds a new section that sets the staffing pattern for nonsecure facilities regulated by the board. The amendment sets the staffing ratio at one staff for every 10 residents during scheduled awake hours (except independent living programs where it is set at one for every 15) and one staff for every 16 residents during scheduled sleep hours. Additionally, when the residents are sleeping, at least one staff member must be in each building and at least one staff member for every 30 residents must be on each floor where residents sleep (except independent living programs).*

### **6VAC35-140-46. Staffing pattern.**

A. During the hours that residents are scheduled to be awake, there shall be at least one child care staff member awake, on duty, and responsible for supervision of every 10 residents, or portion thereof, on the premises or participating in off-campus, facility-sponsored activities except that independent living programs shall have at least one child care staff member awake, on duty, and responsible for supervision of every 15 children on the premises or participating in off-campus, facility-sponsored activities.

B. During the hours that residents are scheduled to sleep there shall be no less than one child care staff member on duty and responsible for supervision of every 16 residents, or portion thereof, on the premises.

C. There shall be at least one child care staff member on duty and responsible for the supervision of residents in each building where residents are sleeping. This requirement does not apply to approved independent living programs.

D. On each floor where children are sleeping, there shall be at least one child care staff member awake and on duty for every 30 children or portion thereof.

VA.R. Doc. No. R09-1344; Filed September 18, 2008, 12:54 p.m.



## TITLE 8. EDUCATION

### STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

#### Final Regulation

<p><b>REGISTRAR'S NOTICE:</b> The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.</p>
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Titles of Regulations: **8VAC40-10. Public Participation Guidelines (repealing 8VAC40-10-10 through 8VAC40-10-90).**

**8VAC40-11. Public Participation Guidelines (adding 8VAC40-11-10 through 8VAC40-11-110).**

Statutory Authority: §§2.2-4007.02 and 23-9.6:1 of the Code of Virginia.

Effective Date: January 1, 2009.

Agency Contact: Linda H. Woodley, Regulatory Coordinator, State Council of Higher Education for Virginia, James Monroe Bldg., 101 North 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 371-2938, FAX (804) 786-2027, or email lindawoodley@schev.edu.

#### Summary:

*The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.*

*This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.*

## CHAPTER 11 PUBLIC PARTICIPATION GUIDELINES

### Part I

#### Purpose and Definitions

##### **8VAC40-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the State Council of Higher Education for Virginia. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

##### **8VAC40-11-20. Definitions.**

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the State Council of Higher Education for Virginia, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

### Part II

#### Notification of Interested Persons

##### **8VAC40-11-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be

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notified electronically, receive documents through a postal carrier, or be deleted from the list.

## **8VAC40-11-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 8VAC40-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

### Part III Public Participation Procedures

## **8VAC40-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

## **8VAC40-11-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

## **8VAC40-11-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

- 1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
- 2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

**8VAC40-11-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

- 1. There is no longer controversy associated with the development of the regulation;
- 2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
- 3. The agency determines that resolution of a controversy is unlikely.

**8VAC40-11-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

**8VAC40-11-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

- 1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

**8VAC40-11-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

- 1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
- 2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1440; Filed September 22, 2008, 10:19 a.m.



**TITLE 12. HEALTH**

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**Final Regulation**

**REGISTRAR'S NOTICE:** The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

**Titles of Regulations: 12VAC30-5. Public Participation Guidelines (adding 12VAC30-5-10 through 12VAC30-5-110).**

**12VAC30-100. State Programs (repealing 12VAC30-100-10 through 12VAC30-100-60).**

**Statutory Authority:** §§2.2-4007.02 et seq. and 32.1-324 of the Code of Virginia.

**Effective Date:** November 12, 2008.

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Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, TTY (800) 343-0634, or email [brian.mccormick@dmas.virginia.gov](mailto:brian.mccormick@dmas.virginia.gov).

## Summary:

*The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.*

*This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.*

## CHAPTER 5

### PUBLIC PARTICIPATION GUIDELINES

#### Part I

#### Purpose and Definitions

#### **12VAC30-5-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of Medical Assistance Services. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

#### **12VAC30-5-20. Definitions.**

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Department of Medical Assistance Services, which is the unit of state government empowered by

the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies,

which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

## Part II Notification of Interested Persons

### **12VAC30-5-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

### **12VAC30-5-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 12VAC30-5-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

## Part III Public Participation Procedures

### **12VAC30-5-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final

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adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

## **12VAC30-5-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

## **12VAC30-5-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

## **12VAC30-5-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

## **12VAC30-5-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

## **12VAC30-5-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

## **12VAC30-5-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their

effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

## Part I

### Public Participation Guidelines

#### **12VAC30-100-10. Definitions. (Repealed.)**

The following words and terms, when used in this part, shall have the following meaning, unless the content clearly indicates otherwise.

"Board" means the Board of Medical Assistance Services.

"Director" means the Director of the Department of Medical Assistance Services.

"Department" or "DMAS" means the Department of Medical Assistance Services.

"Formation and development process" means those activities with respect to a specific regulation which occur between the publication of a notice of intent to develop or modify regulations, and the release of the proposed regulation for public comment.

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic law.

#### **12VAC30-100-20. General information. (Repealed.)**

A. Authority. Chapter 1.1:1 of Title 9 of the Code of Virginia, deals with the promulgation of rules and regulations. Specifically, §9.6.14:7.1 directs agencies of the Commonwealth to develop public participation guidelines for soliciting the input of interested parties in the formation and development of regulations. Section 32.1-325 of the Code of Virginia empowers the Board of Medical Assistance Services to make, adopt, and promulgate regulations.

B. Purpose. This part is designed to provide consistent, written guidelines in order to ensure input from interested parties at all stages of the regulatory process.

C. Administration. The Board of Medical Assistance Services shall have the responsibility for promulgating regulations pertaining to public input in the regulatory process. Pursuant to §32.1-324 C, the director shall have this responsibility and authority when the board is not in session,

subject to such rules and regulations as may be prescribed by the board.

D. Application of regulations. This part shall have general application throughout the Commonwealth.

E. Application of the Administrative Process Act. The provisions of the Virginia Administrative Process Act, which is codified as Chapter 1.1:1 of Title 9 of the Code of Virginia, shall govern the adoption, amendment, modification, and revision of these regulations. All hearings deemed necessary by the director on such regulations, shall be conducted in accordance with §9-6.14:7.1.

#### **12VAC30-100-30. Identification of interested parties. (Repealed.)**

A. Existing data. The department will maintain a list of those persons and organizations who have demonstrated an interest in certain program regulations in the past through participation in regulatory hearings, correspondence, or other activities with the department.

B. Development of new lists. Periodically, the department shall publish a notice in The Virginia Register of Regulations, in a newspaper published in Richmond, and in other newspapers in Virginia localities, a request that any individual or organization interested in participating in the development of specific rules and regulations notify the office of the director. Any persons or organizations identified in this process will be incorporated in the lists developed under 12VAC30-100-30 A. The director may periodically remove from the lists persons or organizations that request to be removed or who fail to respond to an inquiry regarding continued interest.

#### **12VAC30-100-40. Notification of interested parties. (Repealed.)**

A. Individual mailings. When the Director of DMAS determines that specific regulations need to be developed or modified, the program shall notify by mail the individuals and organizations identified in 12VAC30-100-30. The notice shall include the title of the regulation to be developed or modified; a summary of the subject matter; the program contact person, mailing address, and telephone number; and the date by which a notice of a desire to participate in the formation and development process must be received. This rule shall not be mandatory where the department is formulating and developing regulations pursuant to court order, or federally required action or General Assembly action, but whenever time permits every effort will be made to provide such notice.

B. Notice of intent. When the department determines that specific regulations need to be developed or modified, the department will publish a Notice of Intent in The Virginia Register of Regulations. This notice will include the title of the regulation to be developed or modified; a summary of the

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subject matter; the program contact person, mailing address and telephone number; and the date by which a notice of a desire to participate must be received.

C. An announcement shall be sent to members of the Governor's Advisory Committee on Medicare and Medicaid and the board of the department.

## **12VAC30-100-50. Solicitation of input from interested parties. (Repealed.)**

A. ~~Advisory panels. The department's rule making is so frequent that the Governor's Advisory Committee on Medicare and Medicaid will function as the department's on-going advisory panel. Based on the scope and nature of the regulatory issue, the director may, at his discretion, establish a sole function advisory panel to assist in this development or modification.~~

B. ~~Membership of panels. Members of these sole function advisory panels will be individuals and organization representatives identified under 12VAC30-100-30 and who have expressed the desire to participate in the department's regulatory process. Panel membership will consist of individuals oriented to the department, program issues and constraints of the intended regulations and representatives of entities governed by the proposed regulations. Advisory panels will consist of no less than three nor more than seven members.~~

C. ~~Operation of panels. Individual panels will establish their own operating procedures, but in every case a panel will meet once and then will decide on subsequent meetings. All panel comments and other comments on proposed regulations will be documented by the program and a response will be developed for each comment. A written report on the public and panel comments will be prepared and the subsequent decision or action recommended shall be prepared by departmental staff and submitted to the Board of the Department of Medical Assistance Services for review and approval.~~

D. ~~Exceptions. The use of an advisory panel may be waived at the director's discretion when:~~

- ~~1. There is no response to the notice of intent;~~
- ~~2. The office of the Attorney General determines that regulations are promulgated to comply with state or federal law or federal regulation and that no agency discretion is involved; or~~
- ~~3. When the program is formulating and developing regulations pursuant to a court order.~~

E. ~~Other comments. All persons and organizations who notify the Department of Medical Assistance Services under 12VAC30-100-40 of their desire to comment shall be provided an opportunity to examine regulations in their developmental stage and to provide written comments on~~

~~these regulations to the department. The department shall document the receipt of these comments and will respond to all comments. This rule shall not be mandatory when the department is formulating and developing regulations pursuant to a court order but every effort will be made to comply.~~

## **12VAC30-100-60. Administrative Process Act procedures. (Repealed.)**

~~After regulations have been developed according to these guidelines they shall be submitted for public comment in accordance with the Administrative Process Act.~~

VA.R. Doc. No. R09-1451; Filed September 16, 2008, 4:19 p.m.

### **Notice of Extension of Emergency Regulation**

**Title of Regulation: 12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (adding 12VAC30-60-500).**

**Statutory Authority:** §§32.1-324 and 32.1-325 of the Code of Virginia.

**Effective Dates:** August 8, 2007, through February 7, 2009.

The Department of Medical Assistance Services requested an extension of the emergency regulations, 12VAC30-60, pursuant to §2.2-4011 of the Code of Virginia. The emergency regulations, relating to disease management, were published in 23:26 VA.R. 4427-4429 September 3, 2007 (<http://legis.state.va.us/codecomm/register/vol23/iss26/v23i26.pdf>) with effective dates of August 8, 2007, through August 7, 2008.

The original emergency regulation was followed by a proposed regulation. Upon further research it was determined that the national evidence-based guidelines for the specialized conditions were designed for individuals 18 years and older. Therefore, substantive changes were made to the original proposed regulation specifically dropping the age limit of 21 years and older to 18 years and older for individuals in the fee-for service, who have congestive heart failure (CHF), coronary artery disease (CAD), or chronic obstructive pulmonary disease (COPD). Due to unforeseen delays, it is not possible that the regulatory process will be complete prior to the expiration of the emergency regulation, despite the best efforts of those involved.

The Governor approved the department's request to extend the expiration date of the emergency regulations for six months as provided in §2.2-4011D of the Code of Virginia. Therefore, the regulations will continue in effect through February 2, 2009.

**Agency Contact:** Meredith Lee, Health Care Services Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-5040, FAX (804) 786-1680, or email [meredith.lee@dmas.virginia.gov](mailto:meredith.lee@dmas.virginia.gov).

VA.R. Doc. No. R07-738; Filed September 16, 2008, 10:11 a.m.

**Fast-Track Regulation**

Titles of Regulations: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-70, 12VAC30-70-261, 12VAC30-70-271, 12VAC30-70-500).**

**12VAC30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12VAC30-90-264).**

Statutory Authority: §§32.1-324 and 32.1-325 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until November 12, 2008.

Effective Date: November 27, 2008.

Agency Contact: James Branham, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 225-4587, FAX (804) 786-1680, or email james.branham@dmas.virginia.gov.

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

Purpose: The purpose of the regulation is to simplify hospital and specialized care nursing facility reimbursement either by eliminating unnecessary hospital and specialized care nursing facility requirements or by making the specialized care nursing facility reimbursement similar to the regular nursing facility reimbursement. Both proposals are budget neutral and the reimbursement impact on providers would be negligible. Both proposals would reduce DMAS and provider administrative costs associated with reporting and recordkeeping activities.

Rationale for Using Fast-Track Process: DMAS consulted with the Virginia Hospital and Healthcare Association and the Association (VHHA) representative indicated that the VHHA would not object to eliminating recapture of hospital depreciation. Medicare has already eliminated hospital depreciation recapture. Sometimes hospital depreciation recapture benefits DMAS and other times it benefits the provider. However, in either case the funds involved are not material and it is necessary for DMAS and the provider to review cost reports related to the original hospital depreciation, which may be many years old. Neither party

considers the recordkeeping a good use of resources. The VHHA also agrees that it is not necessary to have the hospital outlier methodology illustration in regulation. DMAS intends to put an outlier calculation spreadsheet on its website.

DMAS consulted with the Virginia Health Care Association and providers receiving specialized care reimbursement under the current system. DMAS presented information regarding how the proposed simplification would have effected reimbursement if the simplification had been in place. Providers agreed that simplification would reduce administrative reporting requirements and make it easier for providers to estimate reimbursement.

Substance:

Eliminate Recapture of Hospital Depreciation

Under current policy, DMAS must “recapture” depreciation when a hospital is sold. DMAS reimburses hospitals for depreciation based on standard depreciation schedules. When a hospital is sold, the seller may experience a windfall if the sale price exceeds the reimbursed depreciation or the seller may experience a loss if the sale price is less than the reimbursed depreciation. If the seller experiences a windfall, DMAS will recapture hospital depreciation; if the seller experiences a loss, DMAS will cover the loss. When a sale occurs, therefore, the seller and DMAS have to calculate the windfall or loss based on the original records. Hospital sales are relatively infrequent, the windfall or loss is usually not large and the net payments/recoveries for DMAS are close to zero. In many cases, this is the only reason for storing older cost reports since Medicare eliminated recapture of hospital depreciation a number of years ago. DMAS and the hospital association agree that there is little cost/benefit in continuing the recapture of hospital depreciation and therefore this regulation would eliminate it.

Eliminate Hospital Outlier Illustration

12VAC30-70-261 are the regulations for the hospital outlier methodology. The subsection to be eliminated is only an illustration that is now more than 10 years out of date. DMAS intends to publish annual hospital outlier calculation worksheets on the DMAS website and therefore it makes more sense to eliminate this subsection than to revise it.

Simplify Reimbursement of Specialized Care Nursing Facility Services

The goals of the planned regulatory action are to reduce unnecessary complexity and reduce administrative burden associated with the method used to determine nursing facility payment rates for adult and pediatric specialized care.

The current specialized care payment rate calculation method uses the Resource Utilization Group System (RUGS III) nursing only index to calculate each facility’s average normalized case mix index (NCMI), which is the measure of

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each facility's average patient severity level normalized by the average of all specialized care patients in the state. Ceilings and payment rates are adjusted by the NCMI, in order to avoid overpayments to facilities with a less severe patient population and to ensure adequate payments to facilities that have a more severe patient population, relative to the state average. When this reimbursement methodology was developed there were approximately 40 adult specialized care providers serving recipients with ventilator, rehabilitation and complex care needs. Since 2003, however, adult specialized care serves only ventilator patients. As a result, there are less than 10 adult specialized care providers with a much more homogenous patient population. Pediatric specialized care still covers all categories, but the patients in the two pediatric specialized care facilities have very similar resource needs. In both the adult and pediatric specialized care facilities, specialized care facility NCMI scores are very close to 1.0 (the same as the state average) and application of the NCMI adjustment has a negligible effect on payment rates and is unnecessary.

Based on the provider and patient changes, there is no longer a compelling reason to continue adjusting rates and ceilings by the NCMI, especially given the extra work this requires and other disadvantages. DMAS uses the services of an outside accounting firm to calculate specialized care NCMI scores and rate adjustments. Specialized care facilities are required to send in additional MDS data on a monthly basis and the calculations cannot be completed until all facilities have sent in this data. Providers have indicated to DMAS that the additional work is a burden and the lack of timeliness in finalizing rates is frustrating.

Along with eliminating the NCMI, DMAS is proposing two additional changes to further simplify the methodology by conforming the inflation adjustment and occupancy requirements to the methodology used in regular nursing facility reimbursement.

The current inflation methodology for specialized care reimbursement was also used for regular nursing facility reimbursement until July 1, 2002. This methodology involves a combination of historical and anticipated inflation, annual revisions and quarterly inflation updates. The new, simpler inflation methodology adopted effective July 1, 2002, for regular nursing facility reimbursement updates inflation annually using a single inflation factor. The inflation methodology used for specialized care reimbursement, however, was not changed. This regulation would require that the specialized care reimbursement use the simpler inflation methodology utilized for regular nursing facility reimbursement.

Additionally, this regulatory action will require adult specialized care reimbursement to use the same 90% occupancy requirement used in the regular nursing facility reimbursement. Under current regulations the occupancy

requirement only applies to regular nursing facilities not to adult specialized care even though occupancy is already calculated by using total facility paid days, including specialized care days, as a percentage of total available days. DMAS does not anticipate that capital reimbursement for specialized care facilities would be frequently affected by this change, but, in any event, the special consideration is not justified. The lower 70% occupancy requirement for pediatric specialized care would not change.

Issues: The advantage to both the hospital and nursing facility providers of this change is the reduction of paperwork that is required by the policies being changed by this action. The advantage to DMAS with this change will be the simplification of both the inpatient hospital and nursing facility cost settlement process. There are no disadvantages to the Commonwealth for this action. The changes do not have a fiscal impact and they eliminate unnecessary administrative burdens on both DMAS and providers.

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

Summary of the Proposed Amendments to Regulation. The proposed regulations will simplify Medicaid hospital and specialized care reimbursement methodologies.

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

Estimated Economic Impact. Department of Medical Assistance Services (DMAS) proposes to simplify Medicaid hospital and specialized care reimbursement methodologies.

The specialized care nursing facility reimbursement will be simplified by eliminating the case mix adjustment and using the same inflation method used in the regular nursing facility reimbursement methodology. The reason for eliminating case mix adjustment is the fact that these facilities currently cover only ventilator dependent patients leading to very homogeneous mix of cases. In the past, the patient mix was heterogeneous because complex health and comprehensive services were covered by adult specialized care facilities.

Also, the specialized care nursing facility inflation methodology is much more complex than the inflation methodology for regular nursing facilities. The proposed changes will adopt the simpler regular nursing facility inflation methodology for specialized care nursing facilities.

Furthermore, DMAS proposes a new statewide ceiling so as to maintain the budget neutrality after the proposed changes. So, there is no net significant fiscal effect is expected as a result of the proposed changes. However, simplified reimbursement methodology is expected to reduce administrative costs and staff time at DMAS. Providers are expected to experience similar benefits.

Another change proposed will eliminate recapture of hospital depreciation when a provider hospital is sold. DMAS

currently reimburses hospitals for depreciation. Any loss or gain that may accrue to the seller when a hospital is sold is paid or recovered by DMAS. It is reported that hospital sales are rare, the seller losses or gains are insignificant, and net payments or recoveries by DMAS are close to zero. Thus, no large fiscal effect is expected from eliminating the recapture of hospital depreciation as proposed. However, this proposed change will remove the sole reason that many hospitals and DMAS have been storing older cost reports and provide some savings.

The fiscal savings in administrative expenses and staff time at DMAS are estimated to be about \$50,000. Similar savings are likely to accrue to the providers as well.

Finally, DMAS is proposing to remove an example contained in the regulations. DMAS intends to provide access to a similar example on its website. Thus, while providers will likely still have access to the same information through the website, DMAS will not be required to update its regulations every time when assumptions in the example changes.

**Businesses and Entities Affected.** These regulations apply to 8 providers of specialized care and approximately 95 hospitals.

**Localities Particularly Affected.** The proposed regulations apply throughout the commonwealth.

**Projected Impact on Employment.** The proposed simplified methodologies and reduced recordkeeping requirements are expected to reduce demand for labor.

**Effects on the Use and Value of Private Property.** No significant effect on the use and value of private property is expected.

**Small Businesses: Costs and Other Effects.** None of the effected entities are believed to be small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed changes are not estimated to have an adverse impact on small businesses.

**Real Estate Development Costs.** No significant effect on the real estate development costs is expected.

**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 agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Simplify Hospital and Specialized Care Reimbursement (12VAC30-70-70, 12VAC30-70-261, 12VAC30-70-271, 12VAC30-70-500 and 12VAC30-90-264).

Summary:

*The amendments accomplish several reimbursement methodology changes designed to simplify provider reimbursement. The first is to simplify hospital reimbursement by eliminating recapture of hospital depreciation when a hospital is sold; this also eliminates the associated recordkeeping. The amendments also eliminate the hospital outlier illustration, which is outdated.*

*The regulation simplifies reimbursement for specialized care nursing facilities by (i) eliminating the case mix adjustment and (ii) using the same inflation method and capital rate calculation used in the regular nursing facility reimbursement methodology. After recent changes to the covered groups, there is no longer a justification for the case mix adjustment and the associated reporting. The changes are budget neutral.*

**12VAC30-70-70. Revaluation of assets.**

A. Effective ~~October 1, 1984~~ July 1, 2008, the valuation of an asset of a hospital or long-term care facility which has undergone a change of ownership on or after July 18, 1984, shall be the lesser of the seller's allowable acquisition depreciated historical cost ~~to~~ (net book value) as determined for Medicaid reimbursement of the owner of record as of July 18, 1984, or the acquisition cost to the new owner.

B. In the case of an asset not in existence as of July 18, 1984, the valuation of an asset of a hospital or long-term care facility shall be the lesser of the seller's allowable depreciated historical cost (net book value) as determined for Medicaid reimbursement of the first owner of record, or the acquisition cost to the new owner.

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C. In establishing appropriate allowance for depreciation, interest on capital indebtedness, and return on equity (if applicable prior to July 1, 1986) the base to be used for such computations shall be limited to subsection A or B above of this section.

D. Costs (including legal fees, accounting and administrative costs, travel costs, and feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) shall be reimbursable only to the extent that they have not been previously reimbursed by Medicaid.

~~E. The recapture of depreciation up to the full value of the asset is required.~~

~~F. E. Rental charges in sale and leaseback agreements shall be restricted to the depreciation, mortgage interest and (if applicable prior to July 1, 1986) return on equity based on cost of ownership as determined in accordance with subsections A- and B- above of this section.~~

## **12VAC30-70-261. Outlier operating payment.**

A. An outlier operating payment shall be made for outlier cases. This payment shall be added to the operating payments determined in 12VAC30-70-231 and 12VAC30-70-251. Eligibility for the outlier operating payment and the amount of the outlier operating payment shall be determined as follows:

1. The hospital's adjusted operating cost for the case shall be estimated. This shall be equal to the hospital's total charges for the case times the hospital's operating cost-to-charge ratio, as defined in subsection C of 12VAC30-70-221, times the adjustment factor specified in 12VAC30-70-331 B.

2. The adjusted outlier operating fixed loss threshold shall be calculated as follows:

a. The outlier operating fixed loss threshold shall be multiplied by the statewide average labor portion of operating costs, yielding the labor portion of the outlier operating fixed loss threshold. Hence, the nonlabor portion of the outlier operating fixed loss threshold shall constitute one minus the statewide average labor portion of operating costs times the outlier operating fixed loss threshold.

b. The labor portion of the outlier operating fixed loss threshold shall be multiplied by the hospital's Medicare wage index, yielding the wage adjusted labor portion of the outlier operating fixed loss threshold.

c. The wage adjusted labor portion of the outlier operating fixed loss threshold shall be added to the nonlabor portion of the outlier operating fixed loss threshold, yielding the wage adjusted outlier operating fixed loss threshold.

3. The hospital's outlier operating threshold for the case shall be calculated. This shall be equal to the wage adjusted outlier operating fixed loss threshold times the adjustment factor specified in 12VAC30-70-331 B plus the hospital's operating payment for the case, as determined in 12VAC30-70-231 or 12VAC30-70-251.

4. The hospital's outlier operating payment for the case shall be calculated. This shall be equal to the hospital's adjusted operating cost for the case minus the hospital's outlier operating threshold for the case. If the difference is less than or equal to zero, then no outlier operating payment shall be made. If the difference is greater than zero, then the outlier operating payment shall be equal to the difference times the outlier adjustment factor.

~~B. An illustration of the above methodology is found in 12VAC30-70-500.~~

~~C. B.~~ The outlier operating fixed loss threshold shall be recalculated using base year data when the DRG payment system is recalibrated and rebased. The threshold shall be calculated so as to result in an expenditure for outlier operating payments equal to 5.1% of total operating payments, including outlier operating payments, for DRG cases. The methodology described in subsection A of this section shall be applied to all base year DRG cases on an aggregate basis, and the amount of the outlier operating fixed loss threshold shall be calculated so as to exhaust the available pool for outlier operating payments.

## **12VAC30-70-271. Payment for capital costs.**

A. Inpatient capital costs shall be determined on an allowable cost basis and settled at the hospital's fiscal year end. Allowable cost shall be determined following the methodology described in Supplement 3 (12VAC30-70-10 through 12VAC30-70-130). Inpatient capital costs of Type One hospitals shall continue to be settled at 100% of allowable cost. For services beginning July 1, 2003, inpatient capital costs of Type Two hospitals shall be settled at 80% of allowable cost. For hospitals with fiscal years that do not begin on July 1, 2003, inpatient capital costs for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date based on the number of calendar months before and after that date. Capital costs apportioned before that date shall be settled at 100% of allowable cost, and those after at 80% of allowable cost.

B. The exception to the policy in subsection A of this section is that the hospital specific rate per day for services in freestanding psychiatric facilities licensed as hospitals, as determined in 12VAC30-70-321 B, shall be an all-inclusive payment for operating and capital costs.

~~C. Until prospective payment for capital costs is implemented, the provisions of 12VAC30-70-70 regarding recapture of depreciation shall remain in effect.~~

**12VAC30-70-500. ~~Outlier methodology illustration.~~  
(Repealed.)**

**OUTLIER METHODOLOGY ILLUSTRATION**  
(dollar amounts and other values are for illustration purposes only)

Assume the Following:

Medicare: Fixed Loss Cost Outlier Threshold for Fiscal Year 1996	\$15,150.00	
Medicare: Marginal Cost Factor for Cost Outliers for Fiscal Year 1996	0.8000	
Hospital X Operating Cost to Charge Ratio	0.7200	
Hospital X Capital Cost to Charge Ratio	0.0600	
Medicare Wage Index for Hospital X	0.9413	
Statewide Average Labor Portion of Operating Costs	0.5977	
Hospital X Billed Charges for Case Y	\$100,000.0	0
Total Adjusted Costs per Case for Hospital X	\$3,115.00	
Relative Weight for Case Y	3.1790	
Adjustment Factor for DRG Cases	0.6197	
Step 1 Calculate Hospital X Operating Costs for Case Y:		
Hospital X Billed Charges for Case Y	\$100,000.0	0
Hospital X Operating Cost to Charge Ratio	×	.7200
Hospital X Operating Costs for Case Y	\$72,000.00	
Step 2 Calculate Hospital X DRG Operating Amount for Case Y:		
Total Adjusted Operating Costs per	\$3,115.00	

Step 3

Calculate Hospital X Cost Outlier Threshold for Case Y:

Case for Hospital X		
Relative Weight for Case Y	×	3.1790
Hospital X DRG Operating Amount for Case Y		\$9,902.59
Fixed Loss Cost Outlier Threshold		\$15,150.00
Statewide Average Labor Portion of Operating Costs	×	0.5977
Labor Portion of Fixed Loss Cost Outlier Threshold		\$9,055.16
Wage Index for Hospital X	×	0.9413
Wage Adjusted Labor Portion of Fixed Loss Cost Outlier Threshold		\$8,523.62
Non-Labor Portion of Fixed Loss Cost Outlier Threshold	+	\$6,094.85
Wage Adjusted Fixed Loss Cost Outlier Threshold		\$14,618.46
Hospital X DRG Operating Amount for Case Y	+	\$9,902.59
Hospital X Cost Outlier Threshold for Case Y		\$24,521.05
Step 4 Calculate Hospital X Operating Outlier Amount for Case Y:		
Hospital X Operating Costs for Case Y		\$72,000.00
Hospital X Cost Outlier Threshold for Case Y	-	\$24,521.05
Hospital X Operating Outlier Costs for Case Y		\$47,478.95

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	Marginal Cost Factor for Cost Outliers	×	0.8000
	Hospital X Operating Outlier Amount for Case Y		\$37,983.16
Step 5	Calculate Hospital X Total Payment for Case Y:		
	Hospital X DRG Operating Amount for Case Y		\$9,902.59
	Hospital X Operating Outlier Amount for Case Y	+	\$37,983.16
	Hospital X Total Amount for Case Y		\$47,885.75
	Adjustment Factor for DRG Cases	×	0.6197
	Hospital X Total Payment for Case Y		\$29,674.80

Subpart XVII  
Specialized Care Services

## 12VAC30-90-264. Specialized care services.

Specialized care services provided in conformance with 12VAC30-60-40 E and H, 12VAC30-60-320 and 12VAC30-60-340 shall be reimbursed under the following methodology. The nursing facilities that provide adult specialized care for the categories of Ventilator Dependent Care, will be placed in one group for rate determination. The nursing facilities that provide pediatric specialized care in a dedicated pediatric unit of eight beds or more will be placed in a second group for rate determination.

1. Routine operating cost. Routine operating cost shall be defined as in 12VAC30-90-271 and 12VAC30-90-272. To calculate the routine operating cost reimbursement rate, routine operating cost shall be converted to a per diem amount by dividing it by actual patient days.
2. Allowable cost identification and cost reimbursement limitations. The provisions of Article 5 (12VAC30-90-50 et seq.) of Subpart II of Part II of this chapter and of Appendix III (12VAC30-90-290) of Part III of this chapter shall apply to specialized care cost and reimbursement.
3. Routine operating cost rates. Each facility shall be reimbursed a prospective rate for routine operating costs. This rate will be the lesser of the facility-specific prospective routine operating ceiling, or the facility-specific prospective routine operating cost per day plus an

efficiency incentive. This efficiency incentive shall be calculated by the same method as in 12VAC30-90-41.

4. Facility-specific prospective routine operating ceiling. Each nursing facility's prospective routine operating ceiling shall be calculated as:

a. Statewide ceiling. The statewide routine operating ceiling shall be ~~\$415 as of July 1, 2002, the weighted average (weighted by 1994 days) of specialized care rates in effect on July 1, 1996, reduced by statewide weighted average ancillary and capital cost per day amounts based on audited 1994 cost data from the 12 facilities whose 1994 FY specialized care costs were audited during 1996.~~ This routine operating ceiling amount shall be adjusted for inflation by the percentage of change in the moving average of the Virginia specific Skilled Nursing Facility Market Basket of Routine Service Costs, as developed by DRI/McGraw Hill, using the second quarter 1996 DRI table. The respective statewide operating ceilings will be adjusted each quarter in which the provider's most recent fiscal year ends, by adjusting the most recent interim ceiling by 100% of historical inflation and 50% of forecasted inflation to the end of the provider's next fiscal year based on 12VAC30-90-41.

b. The portion of the statewide routine operating ceiling relating to nursing salaries (as determined by the 1994 audited cost report data, or 67.22%) will be wage adjusted using a normalized wage index. The normalized wage index shall be the wage index applicable to the individual provider's geographic location under Medicare rules of reimbursement for skilled nursing facilities, divided by the statewide average of such wage indices across the state. This normalization of wage indices shall be updated January 1, after each time the Health Care Financing Administration (HCFA) publishes wage indices for skilled nursing facilities. Updated normalization shall be effective for fiscal years starting on and after the January 1 for which the normalization is calculated.

~~c. The percentage of the statewide routine operating ceiling relating to the nursing labor and nonlabor costs (as determined by the 1994 audited cost report data or 71.05%) will be adjusted by the nursing facility's specialized care average Resource Utilization Groups, Version III (RUG III) Nursing Only Normalized Case Mix Index (NCMI). The NCMI for each nursing facility will be based on all specialized care patient days rendered during the six month period prior to that in which the ceiling applies (see subdivision 6 of this section).~~

5. Normalized case mix index (NCMI). Case mix shall be measured by RUG III nursing only index scores based on Minimum Data Set (MDS) data. The RUG III nursing only weights developed at the national level by the Health Care

Financing Administration (HCFA) (see 12VAC30-90-320) shall be used to calculate a facility-specific case mix index (CMI). The facility-specific CMI, divided by the statewide CMI shall be the facility's NCMI. The steps in the calculation are as follows:

a. The facility-specific CMI for purposes of this rate calculation shall be the average of the national RUG-III Nursing-Only weights calculated across all patient days in the facility during the six months prior to the six-month period to which the NCMI shall be applied to the facility's routine operating cost and ceiling.

b. The statewide CMI for purposes of this rate calculation shall be the average of the national RUG-III Nursing-Only weights calculated across all specialized care patient days in all Specialized Care Nursing facilities in the state during the six months prior to the six-month period to which the NCMI shall be applied. A new statewide CMI shall be calculated for each six-month period for which a provider-specific rate must be set.

c. The facility-specific NCMI for purposes of this rate calculation shall be the facility-specific CMI from subdivision 5 a of this section divided by the statewide CMI from subdivision 5 b of this section.

d. Each facility's NCMI shall be updated semiannually, at the start and the midpoint of the facility's fiscal year.

e. Patient days for which the lowest RUG-III weight is imputed, as provided in subdivision 14 c of this section, shall not be included in the calculation of the NCMI.

6. 5. Facility-specific prospective routine operating base cost per day: The facility-specific routine operating cost per day to be used in the calculation of the routine operating rate and the efficiency incentive shall be the actual routine cost per day from the most recent fiscal year's cost report, adjusted (using DRI-Virginia inflation factors) by 50% of historical inflation and 50% of the forecasted inflation, and adjusted for case mix as described below: for inflation based on 12VAC30-90-41.

a. An NCMI rate adjustment shall be applied to each facility's prospective routine nursing labor and nonlabor operating base cost per day for each semiannual period of the facility's fiscal year.

b. The NCMI calculated for the second semiannual period of the previous fiscal year shall be divided by the average of that (previous) fiscal year's two semiannual NCMI's to yield an "NCMI cost rate adjustment" to the prospective nursing labor and nonlabor operating cost base rate in the first semiannual period of the subsequent fiscal year.

c. The NCMI determined in the first semiannual period of the subsequent fiscal year shall be divided by the

average of the previous fiscal year's two semiannual NCMI's to determine the NCMI cost rate adjustment to the prospective nursing labor and nonlabor operating base cost per day in the second semiannual period of the subsequent fiscal year.

See 12VAC30-90-310 for an illustration of how the NCMI is used to adjust routine operating cost ceilings and semiannual NCMI adjustments to the prospective routine operating base cost rates.

7. 6. Interim rates. Interim rates, for processing claims during the year, shall be calculated from the most recent settled cost report and Minimum Data Set (MDS) data available at the time the interim rates must be set, except that failure to submit a cost and MDS data report timely may result in adjustment to interim rates as provided elsewhere.

8. 7. Ancillary costs. Specialized care ancillary costs will be paid on a pass-through basis for those Medicaid specialized care patients who do not have Medicare or any other sufficient third-party insurance coverage. Ancillary costs will be reimbursed as follows:

a. All covered ancillary services, except kinetic therapy devices, will be reimbursed for reasonable costs as defined in the current NHPS. Effective for specialized care days on or after January 15, 2007, reimbursement for reasonable costs shall be subject to a ceiling. The ceiling shall be \$238.81 per day for calendar year 2004 (150% of average costs) and shall be inflated to the appropriate provider fiscal year. For cost report years beginning in each calendar year, ancillary ceilings will be inflated using the moving average for the second quarter of the year, taken from the Virginia Specific Nursing Home Input Price Index published by Global Insight or its successor for the fourth quarter of the previous year based on 12VAC30-90-41. See 12VAC30-90-290 for the cost reimbursement limitations.

b. Kinetic therapy devices will have a limit per day (based on 1994 audited cost report data inflated to the rate period). See 12VAC30-90-290 for the cost reimbursement limitations.

c. Kinetic therapy devices will be reimbursed only if a resident is being treated for wounds that meet the following wound care criteria. Residents receiving this wound care must require kinetic bed therapy (that is, low air loss mattresses, fluidized beds, and/or rotating/turning beds) and require treatment for a grade (stage) IV decubitus, a large surgical wound that cannot be closed, or second to third degree burns covering more than 10% of the body.

9. 8. Covered ancillary services are defined as follows: laboratory, X-ray, medical supplies (e.g., infusion pumps,

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incontinence supplies), physical therapy, occupational therapy, speech therapy, inhalation therapy, IV therapy, enteral feedings, and kinetic therapy. The following are not specialized care ancillary services and are excluded from specialized care reimbursement: physician services, psychologist services, total parenteral nutrition (TPN), and drugs. These services must be separately billed to DMAS. An interim rate for the covered ancillary services will be determined (using data from the most recent settled cost report) by dividing allowable ancillary costs by the number of patient days for the same cost reporting period. The interim rate will be retroactively cost settled based on the specialized care nursing facility cost reporting period.

~~10. 9. Capital costs. Effective July 1, 2001, capital cost reimbursement shall be in accordance with 12VAC30-90-35 through 12VAC30-90-37 inclusive, except that the 90% occupancy requirement shall not be separately applied to specialized care. Capital cost related to specialized care patients will be cost settled on the respective nursing facility's cost reporting period. In this cost settlement the 90% occupancy requirement shall be applied to all the nursing facility's licensed nursing facility beds inclusive of specialized care.~~

To apply this requirement, the following calculation shall be carried out:

- ~~a. Licensed beds, including specialized care beds, times days in the cost reporting period shall equal available days.~~
- ~~b. 90% of available days shall equal 90% occupancy days.~~
- ~~c. 90% occupancy days, minus actual resident days including specialized care days shall equal the shortfall of days if it is positive. It shall be set to zero if it is negative.~~
- ~~d. Actual resident days not including specialized care days, plus the shortfall of days shall equal the minimum number of days to be used to calculate the capital cost per day.~~

~~11. 10. Nurse aide training and competency evaluation programs and competency evaluation programs (NATCEP) costs. NATCEPS costs will be paid on a pass-through basis in accordance with the current NHPS.~~

~~12. 11. Pediatric routine operating cost rate. For pediatric specialized care in a distinct part pediatric specialized care unit, one routine operating cost ceiling will be developed. The routine operating cost ceiling will be computed as follows: §418 as of July 1, 2002.~~

- ~~a. The Complex Health Care Payment Rate effective July 1, 1996, and updated for inflation, will be reduced by (i) the weighted average capital cost per day developed from the 1994 audit data and (ii) the weighted average~~

~~ancillary cost per day from the 1994 audit data updated for inflation in the same manner as described in subdivision 4 a of this subsection.~~

~~b. a. The statewide operating ceiling shall be adjusted for each nursing facility in the same manner as described in subdivisions subdivision 4 and 5 of this section.~~

~~e. b. The final routine operating cost reimbursement rate shall be computed as described for other than pediatric units in subdivision 3 of this section.~~

~~13. 12. Pediatric unit capital cost. Pediatric unit capital costs will be reimbursed in accordance with the current NHPS, except that the occupancy requirement shall be 70% rather than 90%.~~

~~14. MDS data submission. MDS data relating to specialized care patients must be submitted to the department in a submission separate from that which applies to all nursing facility patients.~~

- ~~a. Within 30 days of the end of each month, each specialized care nursing facility shall submit to the department, separately from its submission of MDS data for all patients, a copy of each MDS Version 2.0 which has been completed in the month for a Medicaid specialized care patient in the nursing facility. This shall include (i) the MDS required within 14 days of admission to the nursing facility (if the patient is admitted as a specialized care patient), (ii) the one required by the department upon admission to specialized care, (iii) the one required within 12 months of the most recent full assessment, and (iv) the one required whenever there is a significant change of status.~~

~~b. In addition to the monthly data submission required in subdivision 14 a of this section, the same categories of MDS data required in subdivision 14 a of this section shall be submitted for all patients receiving specialized care from January 1, 1996, through December 31, 1996, and shall be due February 28, 1997.~~

~~e. If a provider does not submit a complete MDS record for any patient within the required timeframe, the department shall assume that the RUG-III weight for that patient, for any time period for which a complete record is not provided, is the lowest RUG-III weight in use for specialized care patients. A complete MDS record is one that is complete for purposes of transmission and acceptance by the Health Care Financing Administration.~~

~~15. Case mix measures in the initial semiannual periods. In any semiannual periods for which calculations in 12VAC39-90-310 requires an NCMI from a semiannual period beginning before January 1996, the case mix used shall be the case mix applicable to the first semiannual period beginning after January 1, 1996, that is a semiannual period in the respective provider's fiscal~~

period. For example, December year end providers' rates applicable to the month of December 1996, would normally require (in Appendix I (12VAC30-90-270 et seq.) of Part III of this chapter) an NCMI from July to December 1995, and one from January to June 1996, to calculate a rate for July to December 1996. However, because this calculation requires an NCMI from a period before January 1996, the NCMI that shall be used will be those applicable to the next semiannual period. The NCMI from January to June 1996, and from July to December 1996, shall be applied to December 1996, as well as to January to June 1997. Similarly, a provider with a March year end would have its rate in December 1996, through March 1997, calculated based on an NCMI from April through September 1996, and October 1996, through March 1997.

16. Cost reports of specialized care providers are due not later than 150 days after the end of the provider's fiscal year. Except for this provision, the 13. The cost reporting requirements of 12VAC30-90-70 and 12VAC30-90-80 shall apply to specialized care providers.

VA.R. Doc. No. R09-1360; Filed September 24, 2008, 9:54 a.m.

#### Notice of Extension of Emergency Regulation

Title of Regulation: 12VAC30-120. Waivered Services (amending 12VAC30-120-370, 12VAC30-120-380).

Statutory Authority: §§32.1-324 and 32.1-325 of the Code of Virginia.

Effective Dates: September 1, 2007, through March 3, 2009.

The Department of Medical Assistance Services requested an extension of the emergency regulations, 12VAC30-120, pursuant to §2.2-4011 of the Code of Virginia. The emergency regulations were published in 23:24 VA.R. 4030-4034 August 6, 2007 (<http://legis.state.va.us/codecomm/register/vol23/iss24/v23i24.pdf>) with effective dates of September 1, 2007, through August 31, 2008.

Acute and long-term care is a new initiative that has an impact on almost all aspects of the Medicaid program. It is a large and complex overlay on the entire Medicaid program. Although the initiative focuses on the integration of acute and long-term care, the Department of Medical Assistance Services (DMAS) has had to develop and implement the program while integrating its various features into every aspect of Medicaid. The difficulties involved in the seamless integration of acute and long-term care created unforeseen delays, including harmonizing state program features with applicable federal requirements. Quite simply, despite the best efforts of those involved, DMAS has concluded that it will not be able to complete the regulatory process prior to the expiration of the emergency regulations.

The Governor approved the department's request to extend the expiration date of the emergency regulations for six months as provided in §2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through March 3, 2009.

Agency Contact: Adrienne Fegans, Program Operations Administrator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-4112, FAX (804) 786-1680, or email [adrienne.fegans@dmas.virginia.gov](mailto:adrienne.fegans@dmas.virginia.gov).

VA.R. Doc. No. R07-729; Filed September 16, 2008, 10:11 a.m.

#### Notice of Extension of Emergency Regulation

Titles of Regulations: 12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-140, 12VAC30-50-150, 12VAC30-50-180; adding 12VAC30-50-228, 12VAC30-50-491).

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (adding 12VAC30-60-180, 12VAC30-60-185).

12VAC30-80. Methods and Standards for Establishing Payment Rates; other Types of Care (adding 12VAC30-80-32).

12VAC30-120. Waivered Services (amending 12VAC30-120-310, 12VAC30-120-380).

Statutory Authority: §§32.1-324 and 32.1-325 of the Code of Virginia.

Effective Dates: July 1, 2007, through December 29, 2008.

The Department of Medical Assistance Services requested an extension of the above-referenced emergency regulations pursuant to §2.2-4011 of the Code of Virginia. The emergency regulations were published in 23:21 3510-3519 June 25, 2007 (<http://legis.state.va.us/codecomm/register/vol23/iss21/v23i21.pdf>) with effective dates of July 1, 2007, through June 30, 2008.

The 2007 Acts of Assembly, Chapter 847, Item 302 PPP required that the Department of Medical Assistance Services (DMAS) amend the State Plan for Medical Assistance to provide coverage of substance abuse treatment services for children and adults, effective July 1, 2007. Substance Abuse Treatment Services were implemented on that date, with a proposed regulation following the emergency regulation. Following the implementation of the services, DMAS submitted to the Centers for Medicare and Medicaid Services (CMS), the federal agency that authorizes states to make changes to their Medicaid programs, would require substantial changes to Virginia's new coverage of Substance Abuse Treatment Services (SAS). DMAS is still involved in

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protracted negotiations with CMS regarding reimbursement for SAS, as well the implementation of case management services for SAS. This last issue is one of national importance, with Congress currently passing legislation to put a moratorium on CMS' regulations on this issue. The final nature of the SAS regulations is therefore yet to be determined.

The Governor approved the department's request to extend the expiration date of the emergency regulations for six months as provided in §2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through December 29, 2008.

Agency Contact: Catherine Hancock, Policy & Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4272, FAX (804) 786-1680, or email [catherine.hancock@dmas.virginia.gov](mailto:catherine.hancock@dmas.virginia.gov).

VA.R. Doc. No. R07-262; Filed September 16, 2008, 10:10 a.m.

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## TITLE 13. HOUSING

### VIRGINIA MANUFACTURED HOUSING BOARD

#### Final Regulation

REGISTRAR'S NOTICE: The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

Titles of Regulations: **13VAC6-10. Public Participation Guidelines (repealing 13VAC6-10-10 through 13VAC6-10-120).**

**13VAC6-11. Public Participation Guidelines (adding 13VAC6-11-10 through 13VAC6-11-110).**

Statutory Authority: §§2.2-4007.02 and 36-85.18 of the Code of Virginia.

Effective Date: November 13, 2008.

Agency Contact: Lorenzo Dyer, State Building Code Administrator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7163, FAX (804) 371-7092, TTY (804) 371-7089, or email [lorenzo.dyer@dhcd.virginia.gov](mailto:lorenzo.dyer@dhcd.virginia.gov).

Summary:

*The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote*

*public involvement in the development, amendment, or repeal of an agency's regulations.*

*This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.*

## CHAPTER 11

### PUBLIC PARTICIPATION GUIDELINES

#### Part I

#### Purpose and Definitions

#### **13VAC6-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Virginia Manufactured Housing Board. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

#### **13VAC6-11-20. Definitions.**

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Virginia Manufactured Housing Board, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

## Part II Notification of Interested Persons

### **13VAC6-11-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

### **13VAC6-11-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 13VAC6-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

## Part III Public Participation Procedures

### **13VAC6-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or

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fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

## **13VAC6-11-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

## **13VAC6-11-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

## **13VAC6-11-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

## **13VAC6-11-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this

requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

**13VAC6-11-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

**13VAC6-11-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

VA.R. Doc. No. R09-1454; Filed September 23, 2008, 9:47 a.m.



**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS**

**Final Regulation**

Title of Regulation: **18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18VAC10-20-10, 18VAC10-20-120, 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, 18VAC10-20-395).**

Statutory Authority: §§54.1-201, 54.1-404, and 54.1-411 of the Code of Virginia.

Effective Date: December 1, 2008.

Agency Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email apelscidla@dpor.virginia.gov.

Summary:

*The amendments implement a regulatory program for photogrammetrists, including standards for determination of topography, as permitted by Chapter 440 of the 2005 Acts of Assembly.*

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.

Part I  
General

**18VAC10-20-10. Definitions.**

Section 54.1-400 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

- Architect
- Board
- Certified interior designer
- Certified landscape architect
- Interior design by a certified interior designer

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Land surveyor. When used in this chapter, land surveyor shall include surveyor photogrammetrist unless stated otherwise or the context requires a different meaning.

Practice of architecture

Practice of engineering

Practice of land surveying

Practice of landscape architecture

Professional engineer

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"Application" means a completed application with the appropriate fee and any other required documentation, including, but not limited to, references, employment verification, degree verification, and verification of examination and licensure or certification.

"Certified" means an individual holding a valid certification issued by the board that has not been suspended, revoked, or surrendered, and is currently registered with the board to practice in the Commonwealth in accordance with §54.1-405 or 54.1-414 of the Code of Virginia.

"Comity" means the recognition of licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as permitted by §54.1-103 C of the Code of Virginia.

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

"Direct control and personal supervision" shall be that degree of supervision by a person overseeing the work of another whereby the supervisor has both control over and detailed professional knowledge of the work prepared under his supervision and words and phrases of similar import mean that the professional shall have control over the decisions on technical matters of policy and design, and exercises his professional judgment in all professional matters that are embodied in the work and the drawings, specifications, or other documents involved in the work; and the professional has exercised critical examination and evaluation of an employee's, consultant's, subcontractor's, or project team members' work product, during and after preparation, for purposes of compliance with applicable laws, codes, ordinances, regulations and usual and customary standards of care pertaining to professional practice. Further, it is that degree of control a professional is required to maintain over decisions made personally or by others over which the professional exercises direct control and personal supervision. "Direct control and personal supervision" also includes the following:

1. The degree of control necessary for a professional to be in direct control and personal supervision shall be such that the professional:

a. Personally makes professional decisions or reviews and approves proposed decisions prior to their implementation, including the consideration of alternatives, whenever professional decisions that could affect the health, safety, and welfare of the public are made; and

b. Determines the validity and applicability of recommendations prior to their incorporation into the work, including the qualifications of those making the recommendations.

2. Professional decisions that must be made by and are the responsibility of the professional in direct control and personal supervision are those decisions concerning permanent or temporary work that could affect the health, safety, and welfare of the public, and may include, but are not limited to, the following:

a. The selection of alternatives to be investigated and the comparison of alternatives for designed work; and

b. The selection or development of design standards and materials to be used.

3. A professional shall be able to clearly define the scope and degree of direct control and personal supervision and how it was exercised and to demonstrate that the professional was answerable within said scope and degree of direct control and personal supervision necessary for the work for which the professional has signed and sealed; and

4. No sole proprietorship, partnership, corporation, limited liability company, joint venture, professional corporation, professional limited liability corporation, or other entity shall practice, or offer to practice, any profession regulated under this chapter unless there is a resident professional for that service providing direct control and personal supervision of such service in each separate office in which such service is performed or offered to be performed.

"Good moral character" may be established if the applicant or regulant:

1. Has not been convicted of a felony or misdemeanor that has a reasonable relationship to the functions of the employment or category for which the license or certification is sought;

2. Has not, within 10 years of application for licensure, certification, or registration, committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, negligence, or incompetence reasonably related to the applicant's proposed area of practice;

3. Has not engaged in fraud or misrepresentation in connection with the application for licensure, certification, or registration, or related examination;

4. Has not had a license, certification or registration revoked or suspended for cause by this state or by any other jurisdiction, or surrendered a license, certificate, or registration in lieu of disciplinary action;

5. Has not practiced without the required license, registration, or certification in this state or in another jurisdiction within the five years immediately preceding the filing of the application for licensure, certification, or registration by this Commonwealth; or

6. Has not, within 10 years of application for licensure, certification, or registration, committed an act that would constitute unprofessional conduct, as set forth in Part XII of this chapter.

"Landscape architect" means an individual who has been certified as a landscape architect pursuant to the provisions of this chapter and is in good standing with the board to practice in the Commonwealth in accordance with §54.1-409 of the Code of Virginia.

"Licensed" means an individual who holds a valid license issued by the board that has not been suspended, or revoked, or surrendered and who is currently registered with the board to practice in the Commonwealth in accordance with §54.1-405 of the Code of Virginia.

"Place of business" means any location which offers to practice or practices through licensed or certified professionals the services of architecture, engineering, land surveying, certified landscape architecture or certified interior design, or any combination thereof. A temporary field office established and utilized for the duration of a specific project shall not qualify as a place of business under this chapter.

"Profession" means the practice of architecture, engineering, land surveying, certified landscape architecture, or certified interior design.

"Professional" means an architect, professional engineer, land surveyor, landscape architect or interior designer who is licensed or certified, as appropriate, pursuant to the provisions of this chapter and is in good standing with the board to practice his profession in this Commonwealth.

"Registrant" means a business currently registered with the board to offer or provide one or more of the professions regulated by the board.

"Regulant" means a licensee, certificate holder or registrant.

"Resident" means physically present in said place of business a majority of the operating hours of the place of business.

"Responsible person" means the individual named by the entity to be responsible and have control of the regulated services offered, or rendered, or both, by the entity.

"Surveyor photogrammetrist" means a person who by reason of specialized knowledge in the area of photogrammetry has been granted a license by the board to survey land in accordance with Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia for the determination of topography, contours and/or location of planimetric features using photogrammetric methods or similar remote sensing technology.

**[ 18VAC10-20-120. Experience.**

A. The successful completion of the National Council of Architectural Registration Boards (NCARB) Intern Development Program (IDP) shall be required of all applicants for original licensure. IDP training requirements shall be in accordance with NCARB's Handbook for Interns and Architects, ~~2006-2007~~ 2008-2009 Edition.

B. All applicants must have a minimum of 36 months experience/training prior to submitting an application for examination. Any experience/training of less than eight consecutive weeks will not be considered in satisfying this requirement.

C. All applicants must have a minimum of 12 months experience/training in architecture as an employee in the office of a licensed architect prior to submitting an application for examination. An organization will be considered to be an office of a licensed architect if:

1. The architectural practice of the organization in which the applicant works is under the charge of a person practicing as a principal, where a principal is a licensed architect in charge of an organization's architectural practice either alone or with other licensed architects, and the applicant works under the direct supervision of a licensed architect; and

2. The practice of the organization encompasses the comprehensive practice of architecture, including the categories set forth in the NCARB IDP requirements. ]

Part V

Qualifications for Licensure and Standards of Procedure for Land Surveyors

**18VAC10-20-280. Fee schedule.**

All fees are nonrefundable and shall not be prorated.

Application for Fundamentals of Land Surveying	\$60
Application for Principles and Practice of Land Surveying	\$90
<u>Application for Surveyor Photogrammetrist</u>	<u>\$90</u>

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Application for Land Surveyor B	\$90
Renewal	\$90
Comity	\$90
Out-of-state proctor	\$100

## 18VAC10-20-295. Definitions.

"Absolute horizontal positional accuracy" means the value expressed in feet or meters that represents the uncertainty due to systematic and random errors in measurements in the location of any point on a survey relative to the defined datum at the 95% confidence level.

"Approved land surveying experience" means a record of progressive experience under the direct control and personal supervision of a licensed land surveyor, or an individual authorized by statute to practice land surveying, on land surveying work during which the applicant has made practical utilization of acquired knowledge and has demonstrated continuous improvement, growth, and development through the utilization of that knowledge as revealed in the complexity and technical detail of the applicant's work product or work record. The applicant must show continuous assumption of greater individual responsibility for the work product over the relevant period. The progressive experience on land surveying work shall be of a grade and character that indicates to the board that the applicant is minimally competent to practice land surveying. Notwithstanding the definition of "approved land surveying experience," the requirements set forth in 18VAC10-20-310 shall not be waived.

"Approved photogrammetric surveying or similar remote sensing technology experience" means diversified training in photogrammetric land surveying under the supervision and direction of a licensed land surveyor, licensed surveyor photogrammetrist, or under the supervision and direction of an individual authorized by statute to practice land surveying or photogrammetry. This experience shall have been acquired in positions requiring the exercise of independent judgment, initiative and professional skill in the office and field and written verification of such work experience shall be on forms provided by the board. Experience may be gained either prior to or after education is obtained. Notwithstanding the definition of "approved photogrammetric surveying or similar remote sensing technology experience," the requirements set forth in 18VAC10-20-310 shall not be waived.

"Relative horizontal positional accuracy" means the value expressed in feet or meters that represents the uncertainty due to random errors in measurements in the location of any point on a survey relative to any other point on the same survey at the 95% confidence level.

## 18VAC10-20-310. Requirements for a licensed land surveyor or surveyor photogrammetrist.

A. An SIT who, after meeting the requirements of 18VAC10-20-300, has a minimum of four years of approved land surveying experience, and has been land surveying under the direct control and personal supervision of a licensed land surveyor, shall be admitted to an examination in the Principles and Practice of Land Surveying and the Virginia state-specific examination, provided the applicant is otherwise qualified. Upon passing such examination, the applicant shall be granted a license to practice land surveying, provided the applicant is otherwise qualified.

B. An SIT who, after meeting the requirements of 18VAC10-20-300, has a specific record of four years of approved photogrammetric surveying or similar remote sensing technology experience of which a minimum of three years experience has been progressive in complexity and has been on photogrammetric surveying or similar remote sensing technology projects under the supervision of a licensed land surveyor or licensed surveyor photogrammetrist shall be admitted to a board-approved surveyor photogrammetrist examination and the Virginia state specific examination. Upon passing such examinations, the applicant shall be granted a license to practice photogrammetric surveying, provided the applicant is otherwise qualified.

C. In lieu of the provisions of subsection B of this section, any person presently providing photogrammetric or similar remote sensing technology services with any combination of at least eight years of board-approved education and progressive experience in photogrammetry or similar remote sensing technology, four or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards or National Standard for Spatial Data Accuracy, or equivalent, may be licensed to practice photogrammetric surveying provided an individual submits an application to the board that provides evidence to the satisfaction of the board of the following:

1. The applicant submits to the board certified proof of graduation from high school or high school equivalency that is acceptable to the board, both with evidence of successful completion of courses in algebra, geometry and trigonometry either by transcript or examination, or certified proof of a related higher degree of education, or other evidence of progressive related higher education acceptable to the board;

2. The applicant submits to the board satisfactory proof and evidence of employment as a photogrammetrist or similar remote sensing technology in responsible charge as defined in 18VAC10-20-310 D providing such services within any of the 50 states, the District of Columbia, or any territory or possession of the United States. Evidence of employment shall include verification of the applicant's progressive experience by his supervisor and by the

applicant's clients of the applicant's personal involvement in a minimum of five projects;

3. The applicant must submit three references with the application, all of whom shall be licensed land surveyors in a state or territory of the United States;

4. The applicant shall certify that they have read and understood Chapter 4 (§54.1-400 et seq.) of Title 54.1 and Chapter 17 (§54.1-1700 et seq.) of Title 55 of the Code of Virginia, and this chapter; and

5. The applicant shall apply to the board and submit an application fee for licensure within one year of [ ~~(insert the effective date of these regulations)~~ December 1, 2008 ] or until such time as the examinations required by 18VAC10-20-310 B are available, whichever is later. After [ ~~(insert the effective date of these regulations plus one year)~~ December 1, 2009 ] , or when the examinations required by subsection B of this section become available, whichever is later, no person shall be eligible to apply for licensure as a surveyor photogrammetrist pursuant to this section.

D. Within the context of subsection C of this section, responsible charge of photogrammetric or similar remote sensing technology mapping projects means technical supervision of:

1. Assessing the project needs and constraints and accuracies;

2. Creating the project plan including determining data standards;

3. Creating overall project specifications;

4. Determining flight lines and appropriate photogrammetric control required for project accuracies and constraints;

5. Reviewing and approval of aerotriangulation results, prior to map compilation and certification of the final report of project control;

6. Determining the appropriate features to be collected, how they are to be collected, annotated, stored;

7. Editing and reviewing of collected data and features;

8. Reviewing of equipment, technology, and procedures that meet project requirements;

9. Determining final data standards and quality control for a project;

10. Reviewing and approving the final map products, deliverables, files, and spatial data;

11. Checking and editing final map data for specified completeness and accuracies including project reports, metadata, and any associated databases;

12. Project management; and

13. Other duties requiring decision-making, control, influence, and accountability of the project.

E. Any person licensed pursuant to the terms of subsection B or C of this section shall be licensed as a surveyor photogrammetrist.

### **18VAC10-20-340. Experience standards.**

An applicant shall submit written verification from each employment engagement that has been gained under the direct control and personal supervision of a licensed land surveyor, licensed surveyor photogrammetrist or an individual authorized by statute to practice land surveying on forms provided by the board to be considered by the board as approved land surveying experience.

### **18VAC10-20-350. Examinations.**

A. The Fundamentals of Land Surveying examination consists of the National Council of Examiners for Engineering and Surveying (NCEES) examination on the fundamentals of land surveying.

B. The Principles and Practice of Land Surveying examination consists of an NCEES examination on applied land surveying, or a board-approved surveyor photogrammetrist examination, and a Virginia state-specific examination.

C. The examination for land surveying under §54.1-408 of the Code of Virginia (Land Surveyor B) shall be given at times designated by the board.

D. Unless otherwise stated, applicants approved to sit for an examination must register and submit the required examination fee to be received in the board office, or by the board's designee, at a time designated by the board. Applicants not properly registered will not be allowed into the examination site.

E. Applicants shall be notified by the board of passing or failing the examination but shall not be notified of actual scores. Only the board and its staff shall have access to examination papers, scores, and answer sheets. Examinations may not be reviewed.

F. Should the applicant fail to pass an examination within three years after being authorized to take the examination, the applicant must reapply and meet all current entry requirements at the time of reapplication.

### **18VAC10-20-360. Licensure by comity.**

A. A person in good standing and holding a valid license to engage in the practice of land surveying in another state, the District of Columbia, or any territory or possession of the United States may be licensed, provided the applicant submits verifiable documentation to the board that the education,

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experience, and examination requirements by which the applicant was first licensed in the original jurisdiction were substantially equivalent to those existing in Virginia at the time of the applicant's original licensure. No person shall be so licensed, however, who has not passed an examination in another jurisdiction that was substantially equivalent to that approved by the board at the time of the applicant's original licensure. If the applicant does not meet the requirements for licensure in Virginia that were in effect at the time of original licensure, the applicant shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office. All applicants shall be required to pass a written Virginia state-specific examination. The examination shall include questions on law, procedures and practices pertaining to land surveying in Virginia.

B. A person holding a current license to engage in the practice of land surveying or photogrammetric surveying issued to the applicant by other states, the District of Columbia or any territory or possession of the United States based on requirements that do not conflict with and are at least as rigorous as the provisions contained in 18VAC10-20-310 C may be licensed as a surveyor photogrammetrist without further examination except for the Virginia state examination provided that the applicant was originally licensed prior to the ending date of the provisions contained in 18VAC10-20-310 C.

## **18VAC10-20-380. Minimum standards and procedures for surveys determining the location of physical improvements; field procedures; office procedures.**

A. The following minimum standards and procedures are to be used for surveys determining the location of physical improvements on any parcel of land or lot containing less than two acres or metric equivalent (sometimes also known as "building location survey," "house location surveys," "physical surveys," and the like) in the Commonwealth of Virginia. The application of the professional's seal, signature and date as required by these regulations shall be evidence that the survey determining the location of physical improvements is correct to the best of the professional's knowledge, information, and belief, and complies with the minimum standards and procedures set forth in this chapter.

B. The professional shall determine the position of the lot or parcel of land in accordance with the intent of the original survey and shall set or verify permanent monumentation at each corner of the property, consistent with the monumentation provisions of subdivision C 4 of 18VAC10-20-370. All such monumentation, other than natural monumentation, shall, when feasible, be identified by temporary witness markers.

When the professional finds discrepancies of sufficient magnitude to warrant, in his opinion, the performance of a land boundary survey (pursuant to the provisions of

18VAC10-20-370), he shall so inform the client or the client's agent that such land boundary survey is deemed warranted as a requisite to completion of the physical improvements survey.

The location of the following shall be determined in the field:

1. Fences in near proximity to the land boundary lines and other fences which may reflect lines of occupancy or possession.
2. Other physical improvements on the property and all man-made or installed structures, including buildings, stoops, porches, chimneys, visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), utility lines and poles.
3. Cemeteries, if known or disclosed in the process of performing the survey; roads or travelways crossing the property which serve other properties; and streams, creeks, and other defined drainage ways.
4. Other visible evidence of physical encroachment on the property.

C. The plat reflecting the work product shall be drawn to scale and shall show the following, unless requested otherwise by the client and so noted on the plat:

1. The bearings and distances for the boundaries and the area of the lot or parcel of land shall be shown in accordance with record data, unless a current, new land boundary survey has been performed in conjunction with the physical improvements survey. If needed to produce a closed polygon, the meander lines necessary to verify locations of streams, tidelands, lakes and swamps shall be shown. All bearings shall be shown in a clockwise direction, unless otherwise indicated.
2. North arrow, in accordance with record data.
3. Fences in the near proximity to the land boundary lines and other fences which may reflect lines of occupancy or possession.
4. Improvements and other pertinent features on the property as located in the field pursuant to subsection B of this section.
5. Physical encroachment, including fences, across a property line shall be identified and dimensioned with respect to the property line.
6. On parcels where compliance with restriction is in question, provide the closest dimension (to the nearest 0.1 foot or metric equivalent) from the front property line, side property line, and if pertinent, rear property line to the principal walls of each building. Also, all principal

building dimensions (to the nearest 0.1 foot or metric equivalent).

7. Building street address numbers, as displayed on the premises, or so noted if no numbers are displayed.

8. Stoops, decks, porches, chimneys, balconies, floor projections, and other similar type features.

9. Street name(s), as posted or currently identified, and as per record data, if different from posted name.

10. Distance to nearest intersection, based upon record data. If not available from record data, distance to nearest intersection may be determined from best available data, and so qualified.

11. Building restriction or setback line(s) per restrictive covenants, if shown or noted on the record subdivision plat.

12. The caption or title of the plat shall include the type of survey performed; lot number, block number, section number, and name of subdivision, as appropriate, or if not in a subdivision, the name(s) of the record owner; town or county, or city; date of survey; and scale of drawing.

13. Adjoining property identification.

14. Easements and other encumbrances set forth on the record subdivision plat, and those otherwise known to the professional.

15. A statement as to whether or not a current title report has been furnished to the professional.

16. The professional shall clearly note inconsistencies found in the research of common boundaries between the land being surveyed and the adjoining land(s).

17. Professional's seal, signature and date.

18. Name and address of the land surveyor or registered business.

D. Notwithstanding the monumentation provisions of subsection B of this section or any other provision of these regulations, a professional, in performing a physical improvements survey, shall not be required to set corner monumentation on any property when corner monumentation is otherwise required to be set pursuant to the provisions of a local subdivision ordinance as mandated by §15.2-2240 of the Code of Virginia, or by subdivision A 7 of §15.2-2241 of the Code of Virginia, or where the placing of such monumentation is covered by a surety bond, cash escrow, set-aside letter, letter of credit, or other performance guaranty. When monumentation is not required, the surveyor shall clearly note on the plat "no corner markers set" and the reason to include name of guarantors.

E. Notwithstanding anything to the contrary in this chapter, this chapter shall be construed as to comply in all respects with §54.1-407 of the Code of Virginia.

~~F. In no event may this chapter be interpreted or construed to require the professional to perform work of a lesser quality or quantity than that which is prudent or warranted under the existing field conditions and circumstances.~~

**18VAC10-20-382. Minimum standards and procedures for surveys determining topography; field procedures; office procedures.**

A. The minimum standards and procedures set forth in this section are to be used for topographic surveys performed in the Commonwealth of Virginia pursuant to Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia. The application of the professional's seal, signature and date as required by these regulations shall be evidence that the topographic survey is correct to the best of the professional's knowledge and belief, and complies with the minimum standards and procedures.

B. Minimum field and office procedures. The following information shall be shown on or contained in all plats, maps, or digital geospatial data including metadata used to depict the results of the topographic survey:

1. Physical improvements on the property, all man-made or installed structures, as well as visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), and utility lines and poles shall be shown or depicted when they are visible based on the methodology and scale. If the methodology or scale prevents the depiction of physical improvements on the property, all man-made or installed structures, as well as visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), and utility lines and poles, then such notice shall be clearly stated on or contained in the map, plat, or digital geospatial data including metadata.

2. Elevations shall be provided as spot elevations, contours or digital terrain models.

3. Onsite bench mark(s) shall be established with reference to vertical datum, preferably North American Vertical Datum (NAVD), and shown in the correct location.

4. The title of the topographic survey identifying the land surveyed and showing the state, county or city in which property is located.

5. Name of the individual or entity for whom the survey is being performed.

6. Date, graphic scale, numerical scale, and contour interval of plat, map, or digital geospatial data including metadata.

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7. Depiction and definition of north used for the survey.

1" = 40' ± 1.5 feet ± 0.40 feet

8. Names of highways, streets and named waterways shall be shown.

1" = 50' ± 1.9 feet ± 0.50 feet

9. The horizontal and vertical unit of measurement, coordinate system, and datums, including adjustments if applicable.

1" = 100' ± 3.8 feet ± 1.00 feet

1" = 200' ± 7.6 feet ± 2.00 feet

1" = 400' ± 15.2 feet ± 4.00 feet

10. The following minimum positional accuracies shall be met:

Positional Accuracy is given at the 95% confidence level.

a. Scale and contour interval combinations.

The accuracy standards tables as shown are not intended to be acceptable in all situations. The professional shall be responsible to perform the work to the appropriate quality and extent that is prudent or warranted under the existing field conditions and circumstances.

Map or Plat Scale	Contour Interval
1" = 20'	1 or 2 feet
1" = 30'	1 or 2 feet
1" = 40'	1 or 2 feet
1" = 50'	1 or 2 feet
1" = 100'	1 or 2 feet
1" = 200'	2, 4 or 5 feet
1" = 400'	4, 5 or 10 feet

Metric or other unit of measurements shall meet an equivalent positional accuracy.

Map or plat scales, or contour intervals, other than those defined in these tables shall meet an equivalent positional accuracy.

b. Vertical accuracy standards.

11. A statement, in the following form, shall be shown on or contained in plats, maps, or digital geospatial data including metadata:

	Contours - Vertical Positional Accuracy	Spot Elevations - Vertical Positional Accuracy
Contour line 1' interval	± 0.60 feet	± 0.30 feet
Contour line 2' interval	± 1.19 feet	± 0.60 feet
Contour line 4' interval	± 2.38 feet	± 1.19 feet
Contour line 5' interval	± 2.98 feet	± 1.49 feet
Contour line 10' interval	± 5.96 feet	± 2.98 feet

This \_\_\_\_\_ (provide description of the project) was completed under the direct and responsible charge of, \_\_\_\_\_ (Name of Surveyor or Surveyor Photogrammetrist) from an actual \_\_\_\_\_ Ground or Airborne (check the one that is applicable) survey made under my supervision; that the imagery and/or original data was obtained on \_\_\_\_\_ (Date); and that this plat, map, or digital geospatial data including metadata meets minimum accuracy standards unless otherwise noted.

Positional Accuracy is given at the 95% confidence level.

## 18VAC10-20-392. Photogrammetric surveys.

c. Horizontal accuracy standards.

The use of photogrammetric methods or similar remote sensing technology to perform any part of the practice of land surveying as defined in Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia, shall be performed under the direct control and supervision of a licensed land surveyor or a licensed surveyor photogrammetrist.

Well defined ground points - Horizontal (Radial) Positional Accuracy

## 18VAC10-20-395. Standard of care.

Map or Plat Scale	Absolute Horizontal Positional Accuracy	Relative Horizontal Positional Accuracy
1" = 20'	± 0.8 feet	± 0.20 feet
1" = 30'	± 1.1 feet	± 0.30 feet

In no event may the requirements contained in 18VAC10-20-280 through 18VAC10-20-392 be interpreted or construed to require the professional to perform work of a lesser quality or quantity than that which is prudent or warranted under the existing field conditions and circumstances.

## 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.

**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

Architect License Application, 0401LIC (rev. 5/16/07).

Verification of Architect Examination and Licensure Form, 0401ELVF (rev. 3/1/02).

Architect Experience Verification Form, 0401 EXP (rev. 3/26/02).

Architect Client Experience Verification Form, 0401CEXP (rev. 3/1/02).

Architect Degree Verification Form, 0401DEG (rev. 3/1/02).

Architect Reference Form, 0401REF (rev. 2/23/05).

Architect License Reinstatement Application, 0401REI (rev. 12/1/04).

Architect License Renewal Form, 0401REN, (eff. 4/11/05).

Professional Engineer License Application, 0402LIC (rev. 2/1/07).

Professional Engineer Reference Form, 0402REF (rev. 3/1/02).

Professional Engineer License Reinstatement Application, 0402REI (rev. 12/1/04).

Professional Engineer and Engineer-in-Training Degree Verification Form, 04EDEG (rev. 3/1/02).

Professional Engineer and Engineer-in-Training Experience Verification Form, 04EEXP (rev. 2/19/04).

Engineer Verification of Examination and Licensure Form, 04EELVF (rev. 3/1/02).

Engineer-in-Training Designation Application, 0420DES (rev. 2/1/07).

Engineer-in-Training Reference Form, 0420REF (rev. 3/1/02).

Course Requirements for Engineering Technology Program, 0402CREQ (eff. 2/19/03).

Professional Engineer License Renewal Form, 0402REN, (eff. 4/11/05).

Land Surveyor License Application, 0403LIC (rev. 2/1/07).

Land Surveyor License Reinstatement Application, 0403REI (rev. 12/1/04).

Land Surveyor B License Application, 0404LIC (rev. 2/1/07).

Land Surveyor B License Reinstatement Application, 0404REI (rev. 12/1/04).

Land Surveyor and Surveyor-in-Training Degree Verification Form, 04LSDEG (rev. 2/1/07).

Land Surveyor Verification of Examination and Licensure Form, 04LSELVF (rev. 2/1/07).

Land Surveyor & Surveyor-in-Training Experience Verification Form, 04LSEXP (rev. 2/1/07).

Surveyor Photogrammetrist License Application, 0408LIC (9/19/08).

Surveyor Photogrammetrist License Renewal Form, 0408REN (9/19/08).

"Grandfather" Surveyor Photogrammetrist Reference Form, 0408REF (9/19/08).

Surveyor Photogrammetrist Experience Verification Form, 0408EXP (9/19/08).

"Grandfather" Surveyor Photogrammetrist Experience Verification Form, 0408GXP (9/19/08).

Surveyor Photogrammetrist License Reinstatement Application, 0408REI (9/19/08).

Surveyor Photogrammetrist Degree Verification Form, 0408DEG (9/19/08).

Surveyor Photogrammetrist Verification of Examination and Licensure Form, 0408ELVF (9/19/08).

Surveyor-In-Training Designation Application, 0430DES (rev. 2/1/07).

Land Surveyor License Renewal Form, 04LSREN, (eff. 4/11/05).

Landscape Architect Certificate Application, 0406CERT (rev. 2/1/07).

Verification of Landscape Architect Examination and Certification Form, 0406ELVF (rev. 3/1/02).

Landscape Architect Experience Verification Form for Examination and Comity Applicants, 0406EXP (rev. 6/23/05).

Landscape Architect Degree Verification Form, 0406DEG (rev. 3/1/02).

Landscape Architect Certificate Reinstatement Application, 0406REI (rev. 12/1/04).

Landscape Architect Certificate Renewal Form, 0406REN, (eff. 4/11/05).

Interior Design Certificate Application, 0412CERT (rev. 2/1/07).

Verification of Interior Designer Examination and Certification Form, 0412ELVF (rev. 3/1/02).

Interior Designer Degree Verification Form, 0412DEG (rev. 3/1/02).

Interior Designer Experience Verification Form, 0412EXP (rev. 8/11/05).

Interior Designer Certificate Reinstatement Application, 0412REI (rev. 3/1/02).

Interior Design Certificate Renewal Form, 0412REN, (eff. 4/11/05).

Professional Corporation Registration Application, 04PCREG (rev. 6/2/06).

Professional Corporation Branch Office Registration Application, 04BRPC (eff. 6/7/06).

Business Entity Registration Application, 04BUSREG, (rev. 6/2/06).

Business Entity Branch Office Registration Application, 04BRBUS (rev. 1/3/07).

Professional Limited Liability Company Application Form, 04PLCREG (rev. 6/2/06).

Professional Limited Liability Company Branch Office Registration Application, 04BRPLC (rev. 6/7/06). ]

[ DOCUMENTS INCORPORATED BY REFERENCE

Handbook for Interns and Architects, ~~2006-2007~~ 2008-2009 Edition, National Council of Architectural Registration Boards, 1801 K Street, NW, Suite 1100-K, Washington, DC 20006, [www.ncarb.org](http://www.ncarb.org). ]

V.A.R. Doc. No. R06-86; Filed September 19, 2008, 11:39 a.m.

## **BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY**

### **Proposed Regulation**

**Title of Regulation: 18VAC30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology (amending 18VAC30-20-160; adding 18VAC30-20-185).**

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

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

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# Regulations

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Public Comments: Public comments may be submitted until 5 p.m. on December 12, 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).

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of the Board of Audiology & Speech-Language Pathology, including the authority to establish qualifications for licensure and promulgate regulations. Section 54.1-2604 establishes the board's authority to issue a provisional license in audiology.

Purpose: The board's purpose is to modify requirements for initial licensure to allow an applicant who has been licensed and has practiced in another jurisdiction but who does not possess current certification from the American Speech-Language-Hearing Association (ASHA) or the American Board of Audiology (ABA) to present other qualifications that indicate current competency to practice. The board has also amended requirements for reinstatement of a lapsed license to allow someone who has not practiced in recent years to work with a provisional license under direct supervision for a specified period of time. The goal of the amended regulations is to remove any barriers to licensure that are not necessary to ensure an ability to practice with safety and competency. Evidence of continuing education, current licensure and practice in another jurisdiction, and/or provisional practice under supervision will assure that applicants are adequately competent to protect the health and safety of the clients they serve. Access to audiology and speech-language pathology services should not be hampered by enacting unreasonable rules that make it overly burdensome for a qualified person to be licensed. Conversely, the board has an obligation to ensure that requirements in Virginia are not distinctly less restrictive than other states to the point that persons who would be unqualified in other states are able to obtain a Virginia license.

Substance: Currently, regulations of the board require an applicant for licensure as an audiologist to hold a current and unrestricted Certificate of Clinical Competence in the area in which he seeks licensure issued by the American Speech-Language-Hearing Association (ASHA) or certification issued by the American Board of Audiology (ABA). For an applicant who has been licensed in another state, the requirement for current certification may be problematic. The purpose of certification is to provide evidence of completion of a degree, educational courses, a practicum, and clinical experience required for licensure. If an applicant met that requirement at the time of initial licensure and has evidence of continuing education and clinical practice, it may not be necessary to show evidence of holding current certification from ASHA or ABA. Therefore,

the board adopted endorsement provisions that allow an applicant three pathways in which to be licensed: (i) meet the qualifications for licensure as prescribed by 18VAC30-20-170 of this chapter; (ii) provide documentation of continuing education, a current license in another jurisdiction in the United States and evidence of active practice for at least three of the past five years; or (iii) if the applicant does not meet those qualifications, he may be qualified by practicing under supervision for six months with a provisional license in audiology if he can provide evidence of having met the educational qualifications and passed the qualifying examination at the time of initial licensure. Additionally, an applicant who has been licensed in another jurisdiction must submit documentation of 15 continuing competency hours for each year in which he has been licensed in the other jurisdiction, not to exceed 60 hours.

To reinstate a lapsed license within five years, an applicant is required to provide evidence of continuing education equal to the number of hours required for the years the license was lapsed, not to exceed 60 hours. To reinstate a license lapsed for more than five years, an applicant is required to meet the requirements for initial licensure. The board has adopted provisions for reinstatement of a lapsed license identical to those for endorsement of a license from another jurisdiction. The intent of requirements for licensure, whether by endorsement or reinstatement, is to ensure that an applicant is competent to practice in Virginia in a safe, professional manner with current skills and abilities.

Issues: The primary advantage to the public would be the possibility of increasing the number of licensees available in audiology and speech-language pathology. By adding pathways to licensure for persons who have "retired" from practice to raise a family or who are moving to Virginia from another state, the board has made it less burdensome to obtain a license but has concurrently retained the essential requirements for evidence of competency to practice. There are no disadvantages. There are no advantages or disadvantages to the agency. There are no other pertinent matters of interest.

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

Summary of the Proposed Amendments to Regulation. The Board of Audiology and Speech-Language Pathology (Board) proposes to amend its regulations to make requirements for reinstatement of lapsed audiology and speech-language pathology licenses less restrictive. The Board also proposes to allow licensure by endorsement for individuals who hold a current license from another jurisdiction of the United States.

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

Estimated Economic Impact. Currently, audiologists and speech-language pathologists may reinstate a lapsed license

within four years of license expiration by paying a reinstatement fee and providing proof that they have completed 15 hours of continuing education for each year that the license has been lapsed (up to 60 hours total). Individuals whose licenses have lapsed for more than four years must meet all requirements for initial licensure in effect at the time of new application.

To gain initial licensure currently, audiologists must hold either: 1) a current and unrestricted certificate of clinical competence from the American Speech-Language-Hearing Association (ASHA), 2) a certification from the American Board of Audiology (ABA) or 3) certification from any other Board recognized accrediting body. Audiologists must also have passed a qualifying examination from a Board recognized accrediting body within three years of the date of initial licensure application or have actively practiced their profession during one of the past three consecutive years. In general, speech-language pathologists must hold a doctoral degree from a speech-language program accredited by ASHA (or an equivalent accrediting body) and must have passed a qualifying examination within three years of the date of initial licensure application or have actively practiced their profession during one of the past three consecutive years. School speech-language pathologists need only hold a master's degree in speech-language pathology and hold an endorsement in their field from the Virginia Department of Education.

The Board proposes to amend reinstatement of lapsed license requirements so that licensees may reinstate their licenses within five (rather than four) years. The Board also proposes to allow all licensees the option of reapplying for licensure when their Virginia licenses has lapsed for more than five years if they can show proof of completion of 60 hours of continuing education since their license lapsed, have a current license from another jurisdiction in the United States and have actively practiced their profession for at least three of the past five years. Additionally, the Board proposes to allow audiologists whose licenses have lapsed for more than five years to practice under supervision with a provisional license for six months. After that six month period, with their supervisors' recommendation, provisionally licensed audiologists may reinstate their original license. To gain provisional licensure, an applicant must meet the educational requirements for initial licensure and must have passed a qualifying exam when they were initially licensed. The fee for application for provisional licensure is \$50.

Under these proposed regulations, individuals will have one more year than they currently do to reinstate their licenses and may be able to avail themselves of several other paths, depending on what type of license they hold and whether they have been working in another state, to bring their licenses current without going through the expense of initial licensure again. Specifically, licensees who meet any of the criteria for

reinstating a lapsed license will not have to bear the direct and indirect costs of preparing for, and taking, a qualifying examination. These costs would include the fee required to take the exam (\$80) as well as the price of any study materials that would need to be purchased and the value of the time spent on studying and taking the exam. Because these changes will likely lower the cost of reinstatement of Virginia licensure for audiologists and speech-language pathologists with lapsed licenses, a slightly greater number of these individuals may choose to reinstate licensure. To the extent that this slightly increases the pool of audiologists and speech-language pathologists practicing in the Commonwealth, the cost of their services may be slightly reduced. Consumers will likely benefit from having greater choice as to whom they see for these services and may also see costs for these services reduced.

Current regulations do not have a special provision for audiologists and speech language pathologists who are licensed in another political jurisdiction but want to begin practicing in Virginia. Currently, these individuals would have to apply for initial licensure and meet all the requirements listed above.

The Board proposes to allow licensure by endorsement for individuals who hold current licensure in another state or United States territory. Individuals who are to be licensed under this provision must provide evidence of a current license and must have actively practiced their profession for three of the last five years. Individuals who do not meet these criteria, but who want to be licensed by endorsement in audiology, may follow the same provisional licensure path that is available to individuals whose Virginia licenses have lapsed for longer than five years.

Applicants for Virginia licensure who are currently licensed in another jurisdiction will likely benefit from this regulatory change because they will likely be able to avoid the expense of retaking an exam that they have already passed. Because these changes will likely lower the cost of Virginia licensure for audiologists and speech-language pathologists coming from other political jurisdictions, a slightly greater number of these individuals may seek licensure. To the extent that this slightly increases the pool of audiologists and speech-language pathologists practicing in the Commonwealth, the cost of their services may be slightly reduced. Consumers will likely benefit from having greater choice as to whom they see for these services and may also see costs for these services reduced.

**Businesses and Entities Affected.** These regulatory changes will affect all audiologists and speech-language pathologists licensed by the Board and any audiologists and speech-language pathologists who are licensed by another state or U.S. Territory but who want to gain Virginia licensure. The Department of Health Professions (DHP) reports that the

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Board currently licenses 413 audiologists and 2408 speech-language pathologists.

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

Projected Impact on Employment. This regulatory action may slightly increase the number of audiologists and speech-language pathologists licensed by the Commonwealth. To the extent that these individuals practice independently, employment in these fields will likely be slightly increased.

Effects on the Use and Value of Private Property. To the extent that this regulatory action slightly decreases the cost of hiring audiologists and speech-language pathologists, firms that employ these professionals may see a very slight increase in the value of their businesses.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action but may see some cost savings cost savings.

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 Audiology and Speech-Language Pathology concurs with the analysis of the Department of Planning and Budget on the amendments for endorsement and reinstatement for 18VAC30-20, Regulations Governing the Practice of Audiology and Speech-Language Pathology.

## Summary:

*The amendments allow an applicant whose license has been lapsed for five or more years to apply for reinstatement based on documentation of meeting current requirements for education, examination and certification or documentation of a current license in another jurisdiction in the United States and evidence of active practice for at least three of the past five years. If an applicant for reinstatement in audiology cannot meet the current licensure requirements or cannot document current licensure and active practice for three years, a third option is provided in the amended regulation. The applicant who has the educational qualifications and has passed the examination may be granted a provisional license and practice under supervision for six months and must be recommended for licensure by his supervisor.*

*New regulations for licensure by endorsement mirror the provisions for reinstatement of a lapsed Virginia license as evidence of current competency to practice.*

## **18VAC30-20-160. Reinstatement of lapsed license.**

A. When a license has not been renewed within one year of the expiration date, a person may apply to reinstate his license by submission of a reinstatement application, payment of the reinstatement fee, and submission of documentation of 15 continuing competency hours equal to the requirement for the number of years for each year the license has been lapsed, not to exceed four years, in which the license has been lapsed 60 hours obtained during the time the license in Virginia was lapsed.

B. A licensee who does not reinstate within ~~four~~ five years as prescribed by subsection A of this section shall either:

reapply 1. Reapply for licensure as prescribed by ~~Part III (18VAC30-20-170 et seq.) of this chapter~~ 18VAC30-20-170 and meet the qualifications for licensure in effect at the time of the new application; or

2. Meet the continuing competency requirements specified in subsection A of this section and provide documentation of a current license in another jurisdiction in the United States and evidence of active practice for at least three of the past five years.

C. An applicant for reinstatement in audiology who does not meet one of the qualifications of subsection B of this section may qualify for reinstatement by practice under supervision

**COMMON INTEREST COMMUNITY BOARD**

**Final Regulation**

**REGISTRAR'S NOTICE:** The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

with a provisional license for six months and a recommendation for reinstatement by his supervisor. The board may issue a provisional license to an applicant who can provide evidence of having met the applicable educational qualifications prescribed in 18VAC30-20-170 and passage of the qualifying examination at the time of initial licensure. Provisional licensure shall be practiced in accordance with subsections C, D, and E of 18VAC30-20-171.

€ D. If the licensee holds licensure in any other state or jurisdiction, he shall provide evidence that no disciplinary action has been taken or is pending. The board reserves the right to deny a request for reinstatement to any licensee who has been determined to have committed an act in violation of 18VAC30-20-280.

**18VAC30-20-185. Licensure by endorsement.**

A. An applicant who has been licensed in another jurisdiction in the United States may apply for licensure in Virginia by submission of a completed application, payment of the application fee, and submission of documentation of 15 continuing competency hours for each year in which he has been licensed in the other jurisdiction, not to exceed 60 hours.

B. An applicant shall either:

1. Meet the qualifications for licensure as prescribed by 18VAC30-20-170; or
2. Provide documentation of a current license in another jurisdiction in the United States and evidence of active practice for at least three of the past five years.

C. An applicant for licensure by endorsement in audiology who does not meet one of the qualifications of subsection B of this section may qualify for endorsement by practice under supervision with a provisional license for six months and a recommendation for licensure by his supervisor. The board may issue a provisional license to an applicant who can provide evidence of having met the educational qualifications prescribed in 18VAC30-20-170 and passage of the qualifying examination at the time of initial licensure. Provisional licensure shall be practiced in accordance with subsections C, D, and E of 18VAC30-20-171.

D. An applicant shall provide evidence that no disciplinary action has been taken or is pending against his license in another jurisdiction. The board reserves the right to deny a request for licensure to any applicant who has been determined to have committed an act in violation of 18VAC30-20-280.

VA.R. Doc. No. R08-1218; Filed September 23, 2008, 1:35 p.m.

Title of Regulation: **18VAC48-10. Public Participation Guidelines (adding 18VAC48-10-10 through 18VAC48-10-110).**

Statutory Authority: §§2.2-4007.02 and 54.1-2349 of the Code of Virginia.

Effective Date: November 13, 2008.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email cic@dpor.virginia.gov.

Summary:

*The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.*

*This regulatory action promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory actions; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.*

**CHAPTER 10**

**PUBLIC PARTICIPATION GUIDELINES**

**Part I**

**Purpose and Definitions**

**18VAC48-10-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Common Interest Community Board. This

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chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

## **18VAC48-10-20. Definitions.**

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Common Interest Community Board, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

## Part II

### Notification of Interested Persons

#### **18VAC48-10-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

#### **18VAC48-10-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC48-10-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

### Part III Public Participation Procedures

#### **18VAC48-10-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

#### **18VAC48-10-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

#### **18VAC48-10-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

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2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

## **18VAC48-10-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

## **18VAC48-10-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

## **18VAC48-10-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. The agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also

notify those persons who requested a hearing under subdivision C 3 of this section.

## **18VAC48-10-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

V.A.R. Doc. No. R09-1471; Filed September 18, 2008, 2:32 p.m.

## **BOARD FOR CONTRACTORS**

### **Final Regulation**

Title of Regulation: 18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-40, 18VAC50-22-50, 18VAC50-22-60; adding 18VAC50-22-300 through 18VAC50-22-350).

Statutory Authority: §§54.1-201 and 54.1-1102 of the Code of Virginia.

Effective Date: December 1, 2008.

Agency Contact: Eric Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

### Summary:

*The amendments implement new prelicense education requirements as mandated by Chapters 454 and 475 of the 2006 Acts of Assembly and promulgated as emergency regulations by the board on August 21, 2006.*

*The regulations amend entry requirements for Class A, B and C contractors by adding the requirement of successful completion of board-approved prelicense education for the designated employee or responsible management. A new section (Part VI) is added to the regulations to provide eligibility and reporting criteria for education providers and education courses.*

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.

## Part II Entry

### **18VAC50-22-40. Requirements for a Class C license.**

A. A firm applying for a Class C license must meet the requirements of this section.

B. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of two years experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;
4. Where appropriate, has passed the trade-related examination or has completed an education and training program approved by the board and required for the specialties listed below:

Blast/explosive contracting

Electrical

Fire sprinkler

Gas fitting

HVAC

Plumbing

~~Blast/explosive contracting~~

Radon mitigation

Water well drilling

~~Fire sprinkler~~

5. Has obtained, pursuant to the tradesman regulations, a master tradesman license as required for those classifications and specialties listed in 18VAC50-22-20 and 18VAC50-22-30.

C. The firm shall provide information for the past five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its qualified individual or individuals, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

D. The firm, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application any current or previous contractor licenses held in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. In accordance with §54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with §54.1-204 of the Code of Virginia.

F. A member of responsible management shall have successfully completed a board-approved basic business course.

### **18VAC50-22-50. Requirements for a Class B license.**

A. A firm applying for a Class B license must meet the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;
2. Is a full-time employee of the firm as defined in this chapter, or is a member of responsible management as defined in this chapter;
3. Has passed a board-approved examination as required by §54.1-1108 of the Code of Virginia or has been exempted from the exam requirement in accordance with §54.1-1108.1 of the Code of Virginia; and
4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

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2. Has a minimum of three years experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. Where appropriate, has passed the trade-related examination or has completed an education and training program approved by the board and required for the classifications and specialties listed below:

Blast/explosive contracting

Electrical

Fire sprinkler

Gas fitting

HVAC

Plumbing

Radon mitigation

Water well drilling

5. Has obtained, pursuant to the tradesman regulations, a master tradesman license as required for those classifications and specialties listed in 18VAC50-22-20 and 18VAC50-22-30.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of \$15,000 or more.

E. Each firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, qualified individual or individuals, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed above have had a substantial identity of interest (as deemed in §54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked,

voluntarily terminated or surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with §54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with §54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

## **18VAC50-22-60. Requirements for a Class A license.**

A. A firm applying for a Class A license shall meet all of the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm as defined in this chapter;

3. Has passed a board-approved examination as required by §54.1-1106 of the Code of Virginia or has been exempted from the exam requirement in accordance with §54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the day of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of five years of experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the firm as defined in this

chapter or is a member of the responsible management of the firm;

4. Where appropriate, has passed the trade-related examination or has completed an education and training program approved by the board and required for the classifications and specialties listed below:

- Blast/explosive contracting
- Electrical
- Fire sprinkler
- Gas fitting
- HVAC
- Plumbing
- Radon mitigation
- Water well drilling

5. Has obtained, pursuant to the tradesman regulations, a master tradesman license as required for those classifications and specialties listed in 18VAC50-22-20 and 18VAC50-22-30.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of \$45,000.

E. The firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, qualified individual or individuals, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to, any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed above have had a substantial identity of interest (as deemed in §54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with §54.1-204 of the Code of Virginia, each applicant shall disclose the following information about

the firm, all members of the responsible management, the designated employee and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with §54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

Part VI  
Prelicense Education

**18VAC50-22-300. Prelicense education courses.**

All courses offered by prelicense education providers must be approved by the board prior to the initial offering of the course, and shall cover business principles related to the standards of conduct found in 18VAC50-22-260 B and other applicable requirements of continued licensure set forth in this chapter. Courses must be eight hours in length. Correspondence and other distance learning courses must include appropriate testing procedures to verify completion of the course.

**18VAC50-22-310. Requirements for prelicense education providers.**

A. Each provider of a prelicense education course shall submit an application for course approval on a form provided by the board. The application shall include but is not limited to:

1. The name of the provider;
2. Provider contact person, address and telephone number;
3. Course contact hours;
4. Schedule of courses, if established, including dates, time and locations;
5. Instructor information, including name, license number(s) if applicable, and a list of other appropriate trade designations;
6. Course and material fees; and
7. Course syllabus.

B. All providers must establish and maintain a record for each student. The record shall include: the student's name and address; social security number or DMV control number; the

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course name and clock hours attended; the course syllabus or outline; the name or names of the instructor; the date of successful completion; and the board's course code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain class records for a minimum of five years.

## **18VAC50-22-320. Reporting of course completion.**

All prelicense education providers shall electronically transmit course completion data to the board in an approved format within seven days of the completion of each individual course. The transmittal will include each student's name, social security number or DMV control number, the date of successful completion of the course and the board's course code.

## **18VAC50-22-330. Posting prelicense education course certificates of approval.**

Copies of prelicense education course certificates of approval must be available at the location a course is taught.

## **[ 18VAC50-30-340 18VAC50-22-340 ]. Reporting of changes.**

Any change in the information provided in 18VAC50-22-310 A must be reported to the board within 30 days of the change with the exception of changes in the schedule of courses, which must be reported within 10 days of the change. Failure to report the changes as required may result in the withdrawal of approval of a prelicense education provider by the board.

## **[ 18VAC50-30-350 18VAC50-22-350 ]. Denial or withdrawal of approval.**

The board may deny or withdraw approval of any prelicense education provider for the following reasons:

1. The courses being offered no longer meet the standards established by the board.
2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way.
3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, course information, student records or fails to produce records required by the Board for Contractors Tradesman Regulations.

**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

Introduction Contractor Licensing Information, 27INTRO (6/00 8/07).

Trade-Related Examinations and Qualifications Information, 27EXINFO (6/00 8/07).

License Application, 27LIC (rev. 8/05 8/08).

Class C License Application (Short Form), 27CSF (rev. 8/05 8/08).

~~Sample-~~

~~Sample Guidelines-~~

Additional License Classification/Specialty Designation Application, 27ADDCL (rev. 8/05 8/07).

Change of Qualified Individual Application, 27CHQI (rev. 8/05 8/07).

Change of Designated Employee Application, 27CHDE (rev. 8/05 8/07).

~~Change of Corporate Officers Form, 27CHCO (6/00).~~

Changes of Responsible Management Form, 27CHRM (eff. 8/07).

Experience Reference, 27EP 27EXP (6/00 8/07).

~~Contractor Examination Candidate Information Bulletin, copyright 2002 by PSI Corporation.~~

~~Virginia Contractors Registration Form (7/02).~~

~~Building Technical Examination Requirements (4/00).~~

Certificate of License Termination, 27TERM (6/00 8/07).

Education Provider Registration/Course Approval, 27CONTEDREG, (eff. 4/08).

Education Provider Listing Form, 27EDLIST, (eff. 4/08).

Financial Statement, 27FINST, (eff. 8/07).

Additional Qualified Individual Experience Reference Form, 27QIEXP, (eff. 8/07). ]

VA.R. Doc. No. R06-340; Filed September 11, 2008, 2:57 p.m.

## **BOARD OF DENTISTRY**

### **Final Regulation**

**REGISTRAR'S NOTICE:** The following model public participation guidelines are exempt from Article 2 (§2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia pursuant to Chapter 321 of the 2008 Acts of Assembly.

**Titles of Regulations: 18VAC60-10. Public Participation Guidelines (repealing 18VAC60-10-10 through 18VAC60-10-120).**

## **18VAC60-11. Public Participation Guidelines (adding 18VAC60-11-10 through 18VAC60-11-110).**

Statutory Authority: §§2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Effective Date: November 12, 2008.

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

### Summary:

*The regulations comply with the legislative mandate (Chapter 321, 2008 Acts of Assembly) that agencies adopt model public participation guidelines issued by the Department of Planning and Budget by December 1, 2008. Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of an agency's regulations.*

*This regulatory action repeals the current public participation guidelines and promulgates new public participation guidelines as required by Chapter 321 of the 2008 Acts of Assembly. Highlights of the public participation guidelines include (i) providing for the establishment and maintenance of notification lists of interested persons and specifying the information to be sent to such persons; (ii) providing for public comments on regulatory action; (iii) establishing the time period during which public comments shall be accepted; (iv) providing that the plan to hold a public meeting shall be indicated in any notice of intended regulatory action; (v) providing for the appointment, when necessary, of regulatory advisory panels to provide professional specialization or technical assistance and negotiated rulemaking panels if a regulatory action is expected to be controversial; and (vi) providing for the periodic review of regulations.*

## CHAPTER 11

### PUBLIC PARTICIPATION GUIDELINES

#### Part I

#### Purpose and Definitions

### **18VAC60-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Dentistry. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

### **18VAC60-11-20. Definitions.**

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

"Administrative Process Act" means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Dentistry, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by §2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

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"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§2.2-4031 et seq.) of the Administrative Process Act.

## Part II

### Notification of Interested Persons

#### **18VAC60-11-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

#### **18VAC60-11-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 18VAC60-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to §2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

## Part III

### Public Participation Procedures

#### **18VAC60-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropoed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the

changes in accordance with §2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to §2.2-4012 E of the Code of Virginia.

### **18VAC60-11-60. Petition for rulemaking.**

A. As provided in §2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to §2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

### **18VAC60-11-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

### **18VAC60-11-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

### **18VAC60-11-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with §2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

### **18VAC60-11-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

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## **18VAC60-11-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to §2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in §2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

V.A.R. Doc. No. R09-1474; Filed September 23, 2008, 1:34 p.m.

## **BOARD OF PHARMACY**

### **Proposed Regulation**

**Title of Regulation:** 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-10, 18VAC110-20-20 through 18VAC110-20-70, 18VAC110-20-80 through 18VAC110-20-104, 18VAC110-20-106 through 18VAC110-20-120, 18VAC110-20-130, 18VAC110-20-140, 18VAC110-20-180 through 18VAC110-20-210, 18VAC110-20-240, 18VAC110-20-270, 18VAC110-20-275, 18VAC110-20-280, 18VAC110-20-320, 18VAC110-20-340, 18VAC110-20-350, 18VAC110-20-355, 18VAC110-20-395, 18VAC110-20-410, 18VAC110-20-425, 18VAC110-20-440, 18VAC110-20-450, 18VAC110-20-460, 18VAC110-20-490, 18VAC110-20-500, 18VAC110-20-520 through 18VAC110-20-555, 18VAC110-20-570, 18VAC110-20-580, 18VAC110-20-590, 18VAC110-20-610, 18VAC110-20-620, 18VAC110-20-621, 18VAC110-20-622, 18VAC110-20-680 through 18VAC110-20-710, adding 18VAC110-20-286, 18VAC110-20-391, 18VAC110-20-535, 18VAC110-20-536).

**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.

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

**Public Comments:** Public comments may be submitted until 5 p.m. on December 12, 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.

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

The specific authority to issue licenses and permits to pharmacists and pharmacies and to control the sale and dispensing of prescription drugs is found in Chapters 33 (§54.1-3300 et seq.) and 34 (§54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

**Purpose:** Regulations of the Board of Pharmacy are complex and broad in scope and applicability to a variety of practice settings. Periodically, it is necessary to review and revise to clarify existing requirements, add new language to address problems that have arisen, delete outmoded regulation, or revise requirements to allow for newer technologies. In revising requirements adapted to the current practice of pharmacy, the board has acted to preserve or construct appropriate safeguards to help ensure safety in practice and in the efficacy and integrity of the drugs being dispensed.

In its promulgation of amended regulations as described in the substance section of this document, the board has incorporated interpretative language now found in several guidance documents and included some provisions that have been tested in pilot programs that are currently approved. While guidance statements advise practitioners on policy matters, they are not enforceable and cannot be relied upon for compliance. Therefore, incorporation of guidance into regulation will make policies more explicitly clear for licensees. Likewise, less restricted policies in pilot programs that have shown to be effective and efficient without any increased risk of medication error have been incorporated in regulations.

The board identified issues with regulations that restrict practice or inhibit modernization and utilization of newer technology, provided the change is within the parameters of law and federal rules and provided it is good policy that protects the health, safety and welfare of the public.

**Substance:** The following sections of the regulations have been addressed in the promulgation of amended regulations:

18VAC110-20-10. Definitions. Several definitions were added to clarify existing or amended regulations. For example, the definition of a correctional facility was added to clarify the term and be more inclusive of all types of facilities. Some terms were defined, such as "chart order," for more flexibility, and others, such as "NABP" were defined to enable use of the acronym in regulation.

18VAC110-20-20. Fees. Since there is an expectation that pharmacy technician programs are modified frequently to reflect changes in medications and pharmacy practice, the board is adding a fee of \$75 for renewal of program approval every two years; there are associated fees for late renewal and reinstatement.

18VAC110-20-30. Requirements for practical experience. Current requirements of the board were made consistent with new ACPE standards for preceptors and experiential training, so amendments to this section conform to national standards for pharmaceutical preceptors and practical experience in order to facilitate reciprocity.

Subsection C requires practical experience can be gained only after completion of the first professional year, but it is unclear when the first professional year ends as some schools now operate year-round rather than in semesters. The board has set completion of certain core curricula as criteria for practical experience and set time limitations on the credit that can be given.

18VAC110-20-40. Procedure for gaining practical experience. Currently, pharmacy intern permits are issued for the period of pharmacy schooling. The board will consider an extension of that time frame for good cause and with a specified expiration date and a limitation of the years of an internship.

The number of interns that may be supervised may be problematic when the internship programs at different pharmacy schools overlap. The board eliminated the restriction on supervision of one pharmacy intern during the same time period to alleviate a barrier to obtaining a preceptor, but retained the principle that the primary assignment of an intern to a preceptor must be one-to-one.

18VAC110-20-60. Content of the examination and grades required; limitation on admittance to examination. The current regulation does not require an applicant to wait a certain time period to take the jurisprudence exam if he has failed it multiple times. There is concern with the security of test items for computerized testing, so the board has set a 30-day requirement for retesting. Provisions of Guidance Document 110-39 relating to Americans with Disabilities accommodations for taking the NAPLEX and law examination have been incorporated into this section.

18VAC110-20-70. Requirements for foreign-trained applicants. The regulations are amended to clarify that an applicant must pass the Foreign Pharmacy Graduate Equivalency Examination before becoming an intern. If an applicant cannot pass the FPGEE, the years spent in an internship may be wasted and the public may not be well protected.

18VAC110-20-80. Renewal and reinstatement of license. The board added a provision to allow electronic notification when there is a change of address and also added a time frame of 14 days for notification, rather than "immediately."

18VAC110-20-90. Requirements for continuing education. In subsection A, the date listed is unnecessary and is deleted. Subsection D is amended to require maintenance of CE

documentation for three years if the board chooses to audit for the previous two renewal cycles.

18VAC110-20-100. Approval of continuing education programs. Amendments will require a board-approved program to have an expiration date; ACPE has an expiration of three years for a written program and one year for a live program. If a live program is to be given more than once, all dates must be on the original application or provided in advance of the program. In addition, the requirement for maintenance of records should be increased from three years to five years for auditing purposes; ACPE requires approved programs to maintain documentation for five years.

18VAC110-20-101. Application for registration as a pharmacy technician. An amendment will clarify that an individual enrolled in a board-approved pharmacy technician training program may work for a maximum of nine months prior to board registration (would include language from 18VAC110-20-111 C).

18VAC110-20-102. Criteria for approval for training programs. There are amendments to further specify a process and requirement for submitting changes to programs and to require programs to self-evaluate the currency of a training program and renew with the board every two years.

18VAC110-20-103. Examination. Provisions of Guidance Document 110-39 relating to Americans with Disabilities accommodations for taking the pharmacy technician examination were incorporated into this section.

18VAC110-20-104. Address of record. The current provision allows 30 days for notification of a change of address; the board added a more restrictive requirement (14 days) but not as restrictive as the current requirement for pharmacists, which is to notify "immediately." There should be consistency in the rules. The board also will allow for electronic communication and will require the technician to maintain a copy of current registration at his principal place of practice.

18VAC110-20-106. Requirements for continued competency. Subsection B should appropriately reference 18VAC110-20-100, which sets out requirements for board approval of continuing education providers. The requirement to maintain documentation of CE has been changed from two years to three years to ensure CE certificates are available for board audits.

18VAC110-20-110. Pharmacy permits generally. Amendments will delete the requirement for the outgoing PIC to take a final inventory but will allow him to do so unless the owner objects and submits written notice to the board. An amendment is added to ensure that a permit cannot be issued to operate a pharmacy from a private residence or dwelling and that more than one permit may not be issued to operate other types of permits out of the same Rx department space;

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e.g. a pharmacy could not also get a second pharmacy permit, or a manufacturer's permit to operate both businesses out of the same physical space. There may be an exception for special or limited-use pharmacy permits.

18VAC110-20-111. Pharmacy technicians. The board has added a requirement for a pharmacy to maintain the start date and completion date for each pharmacy technician in training; there is a nine-month limitation on performing pharmacy technician related duties when in training, but inspectors are not readily able to check whether the individual is in compliance.

18VAC110-20-120. Special or limited-use pharmacy permits. Guidance Document 110-22 provides guidelines for granting waivers relating to restricted access to a free clinic pharmacy under a special-use permit; the board has placed the criteria in regulation.

18VAC110-20-130. Pharmacy closings; going out of business; change of ownership. An amendment is needed to require a closing pharmacy to transfer prescription files somewhere where a patient can access.

18VAC110-20-140. New pharmacies, acquisitions and changes to existing pharmacies. Language is added to specify that once a pharmacy permit is issued, drugs cannot be stocked earlier than two weeks prior to the opening date, and that a pharmacist must be present on a daily bases to ensure safety and integrity of the drugs. If the pharmacy is not ready to open within two weeks, the permit holder must notify the board.

18VAC110-20-180. Security system. The regulation requires all alarms to be monitored in accordance with accepted industry standards and be capable of sending a signal to the monitoring entity. The board will require an alarm that was "grandfathered" to be upgraded if there is a break-in and loss of drugs. If a pharmacy that is open 24 hours a day changes its hours, it must have an alarm system installed before it closes.

18VAC110-20-190. Prescription department enclosures; access to prescription department. Subsection A is amended to eliminate the specific requirement for a door to the prescription enclosure and provided that the enclosure must be locked and alarmed when the pharmacist is not on duty and that it must be capable of being locked whenever the pharmacist is out of the prescription department. Subsection B is clarified with updated terminology. Language is added to allow interns, technicians and other persons authorized by the pharmacist to possess a means of entry only when a pharmacist is on duty.

18VAC110-20-200. Storage of drugs, devices, and controlled paraphernalia; expired drugs. There is a clarification of the storage and security of will-call drugs, and the board has added medical devices similar to drug paraphernalia that cannot be displayed outside the Rx department. It has also

clarified that adulterated or misbranded drugs must be separated from other stock used for dispensing.

18VAC110-20-210. Disposal of drugs by pharmacies. The board has added "other board-approved methods" to disposal by incineration, in case other methods become DEA or EPA approved.

18VAC110-20-240. Manner of maintaining records, prescriptions, inventory records. The board has required a perpetual inventory for Schedule II drugs to include a monthly count-back to reconcile count at least every 30 days. Electronic monitoring is acceptable provided alerts of discrepancies are reviewed at least monthly.

The board has clarified that storage of records for Schedule II through V drugs must be at the same address as the pharmacy within the building where drugs are located, but amendments provide for an electronic database or storage offsite for Schedule VI drugs provided they are retrievable within 48 hours of request. The records are required to be maintained for not less than two years from the date of transaction.

18VAC110-20-270. Dispensing of prescriptions; certification of completed prescriptions; supervision of pharmacy technicians. The board has eliminated the ratios of pharmacist to technician trainee and pharmacy technicians; the pharmacist may determine the number that he can safety and competently supervise at any one time.

In subsection E, the board added a requirement to retain knowingly forged prescriptions for at least 30 days in the event it is needed for an investigation.

18VAC110-20-275. Delivery of dispensed prescriptions. A rule is necessary to require that the contract and policy and procedure manual for alternate delivery sites be maintained at both pharmacy and the alternate site. A controlled substance registration can only be issued for alternate delivery sites if there are patient safety reasons not to deliver directly to the consumer and if compliance are not being compromised for convenience. The language "if required by law" will be removed in subsections B and C.

18VAC110-20-280. Transmission of a prescription order by facsimile machine. The rule is clarified to mean that a hospice can be home hospice, and the term "nursing home" should be changed to long-term care facility. Amendments will also provide that a nurse may fax a verbal order as a prescriber's agent even though the order is not being faxed from prescriber's practice location.

18VAC110-20-286. Chart orders for outpatients. New language was added to set out conditions from guidance document 110-35 that would allow retail pharmacies to use chart orders.

18VAC110-20-320. Refilling of Schedule III through VI prescriptions. Subsection D is amended to allow for early refill due to good cause or absence (vacation). That

subsection is also amended to clarify that the intent is referring to the timing of refills and not about the ability to change Rx based on the strength of drug in stock.

18VAC110-20-340. Packaging standards for dispensed prescriptions. The board has included provisions of Guidance Document 110-12 and Guidance Document 110-23 on packaging.

18VAC110-20-350. Special packaging. Amendments eliminate language redundant with the statute and update the language consistent with electronic records.

18VAC110-20-355. Pharmacy repackaging of drug; records required; labeling requirements. An amendment will require pharmacist's initials to filling record for automated counting devices or dispensers to verify process as stated in subsection A. Amendments to add language from Guidance Document 110-16 related to returning drugs to stock that are dispensed to a patient but not picked up from the pharmacy.

18VAC110-20-391. Prescription blanks. Language from a board guidance document related to what can be on the face of a prescription blank provided by a pharmacy to a provider is included in regulation. It prohibits nonessential information from being put on the face of the prescription blank.

18VAC110-20-395. Purchase of drugs. An amendment is necessary to allow for a nonlicensed warehouse to sell to pharmacy through intra-company sales.

18VAC110-20-425. Robotic pharmacy systems. The board has eliminated the requirement for an application and approval of a robotic pharmacy system and included the requirements for such a system in regulation. Among the rules set out are packaging standards for drugs stored in robotics and consistency with USP standards.

18VAC110-20-440. Responsibilities of the pharmacist-in-charge. An amendment is for clarity only.

18VAC110-20-450. After-hours access to the pharmacy. The rules for after-hours access to pharmacy are now in conflict with JCHAO standards, so the board has revised this section to permit a nurse to have access to drugs maintained by the pharmacy outside the pharmacy. There are also provisions for security of such drugs.

18VAC110-20-460. Floor stock drugs; proof of delivery; distribution records. Amendments were added to (i) require a pharmacist to check drugs before leaving the pharmacy to be stocked on the floor, (ii) require maintenance of manual or electronic delivery records for at least 2 years, and (iii) require records to be maintained for Schedule VI, as well as II-V, but allow the records to be kept off site.

18VAC110-20-490. Automated devices for dispensing and administration of drugs. The board tracked the language in subdivision 5 of 18VAC110-20-555 related to requiring a

pharmacist to check delivery orders before they leave the pharmacy. It requires maintenance of records of filling for Schedule VI and auditing records of Schedule VI, but allows pharmacies to keep these records electronically or off site. There is a clarification of what a "sample of administration" and a requirement to retain all records required by this section for 24 months.

18VAC110-20-500. Licensed emergency medical services agencies program. Amendments will (i) require a pharmacist to check before sealing the drug kit used by EMS agencies, and (ii) allow for intravenous solutions to be stored outside the drug box.

18VAC110-20-535. Repackaging of already dispensed prescriptions. This is a new section that incorporates a board guidance document into regulation. This section will allow a provider pharmacy for a LTCF to repackage a patient's medications that have been dispensed by another pharmacy into unit-dose or compliance packaging to conform to the system used in the LTCF under certain conditions.

18VAC110-20-536. Prescription drugs sent outside the facility. This new section, which incorporates language from a board guidance document into regulation, allows a long-term care facility to send a patient's medication out on pass with the patient, provided the medication is appropriately packaged and labeled for outpatient use.

18VAC110-20-540. Emergency drug kit and 18VAC110-20-550. Stat-drug box. These section was amended by incorporating language from guidance document 110-11 to clarify that emergency drug kits and stat-drug boxes may only be provided to those facilities that have licensed individuals to access the drugs, so assisted living facilities that use med aides to administer could have a stat-drug box if they have a nurse on duty for accessing the box.

18VAC110-20-555. Use of automated dispensing devices. Amendments allow the device in nursing homes to be use to house drugs that would be in the emergency kit and be accessed prior to receiving electronic authorization from the pharmacy reviewer. They also require that the device be able to produce a record of each distribution from the device. This is consistent with hospital language for these devices.

18VAC110-20-570. Drugs in infirmaries/first aid rooms. Subsection D was deleted as it pertains to administration of over-the-counter drugs, which are not regulated by the Board of Pharmacy.

18VAC110-20-580. Humane societies and animal shelters. An amendment specifies that the record of training for persons at a humane society or animal shelter should be maintained at the facility and retained for two years. It is also clarified that only euthanasia drugs can be stored or administered at permitted facility.

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18VAC110-20-590. Drugs in correctional institutions. Amendments allow for the use of other types of forms to accompany returned drugs to the pharmacy; it is currently restricted to drug administration record and facilities to stock certain prescription drugs, including vaccines, with a controlled substances registration.

18VAC110-20-690. Persons or entities authorized or required to obtain a controlled substances registration. Amendments conform requirements for inspection to other pharmacy types and clearly specify who can be a responsible party for a controlled substance registration (CSR).

18VAC110-20-700. Requirements for supervision for controlled substances registrants. The board has amended to (i) require the responsible party to inform the board of a change within 14 days and submit a new application naming the responsible party for the CSR, (ii) allow pharmacy techs to have access to the controlled substances to perform certain tasks, and (iii) clarify who may qualify as supervising practitioner to include all practitioners with prescriptive authority.

18VAC110-20-710. Requirements for storage and security for controlled substances registrants. Changes were made to the requirements for the security system to mirror the language for pharmacies.

Issues: There are no particular advantages or disadvantages to the public or the Commonwealth. Amendments that clarify the requirements for regulants may reduce noncompliance. Amendments that facilitate the use of technology, such as those for robotic pharmacy systems, may improve access and accuracy in the dispensing process.

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

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to make many clarifying and substantive changes to its regulations as a part of the periodic review process. The Board proposes to:

1. Add several definitions to aid readers in understanding these regulations,
2. Require pharmacy technician training programs to apply for renewal every two years; to pay for staff time to process renewal and other forms, the Board has added fees for program renewal, late renewal and reinstatement; the Board also proposes that pharmacy continuing education programs expire after two years,
3. Remove a requirement for the Board to approve robotic pharmacy systems and also remove the fee that pharmacies were charged for this from the fee schedule,
4. Rewrite requirements and procedures for gaining pharmacy practical experience so these requirements apply to all individuals seeking practical experience and

so pharmacists are not limited to supervising one intern at a time,

5. Require foreign trained pharmacy students to get their certification from the Foreign Pharmacy Graduate Equivalency Committee (FPGEC) before they apply to be interns,

6. Require a 30 day waiting period before an applicant who has taken and failed the jurisprudence exam can take it again,

7. Require pharmacy interns to report within 14 days (by email or regular mail) any change of address; the Board also proposes to extend to 14 days the time that Board licensees have to report a change of address, shorten the time registration certificate holders have to report a change of address to 14 days and to require pharmacy technician training programs to report any substantive changes to the program within 14 days,

8. Require licensees to maintain proof of completion of continuing education for three (rather than two) years following license renewal; continuing education providers will be required to maintain records on all programs, program participants and continuing education hours earned for five (rather than three) years,

9. Specify that pharmacy technician trainees may only perform tasks restricted to pharmacy technicians for nine months and require pharmacies to maintain employment records that show a start and end date for employment of trainees,

10. Allow pharmacists with restricted licenses to serve as program directors for pharmacy technician training programs,

11. Require pharmacy technicians to maintain their certificates at their principal places of practice. Pharmacy technicians who work at more than one pharmacy will be able to keep their certificates either at the home addresses that they have reported to the Board or at one of their workplaces,

12. Restrict private residences from being licensed as pharmacies,

13. Require that pharmacies maintain a perpetual inventory with reconciliation of that inventory every thirty days,

14. Move guidance language for approving special use pharmacies within free clinics to these regulations,

15. Require pharmacies that are going out of business to transfer prescription files to another pharmacy so that customers can still access their records,

16. Specify that drugs may not be stocked by a new pharmacy more than two weeks before the pharmacy

opens and require that a pharmacist be at the pharmacy on a daily basis while drugs are stocked but the pharmacy has yet to open so that security for all drug supplies is maintained,

17. Clarify that all pharmacies that have any hours that they are not open, whether daily or sporadically, must have an approved alarm system in place before they close,

18. Simplify rules for prescription department enclosures to allow greater flexibility to pharmacies,

19. Clarify standards for storage of drugs and require pharmacies to put medical devices that require a prescription where the pharmacist can supervise who accesses them,

20. Allow drugs to be destroyed by incineration or any other method that the Board approves,

21. Require that all records for schedule six drugs be maintained under the same rules as records for schedule II through V drugs; all records for these drugs will have to be kept for at least two years,

22. Eliminate restrictions on the number of pharmacy technician trainees that a pharmacist can supervise at one time and require pharmacies to retain forged prescriptions at least 30 days,

23. Require all contracts, agreements and policy and procedures manuals for alternate delivery sites be maintained both at the alternate site and the originating pharmacy,

24. Clarify that hospices that can fax chart orders to pharmacies include home hospices and that nurses may fax verbal orders. Additionally, the Board proposes to transfer language from guidance that would allow chart orders to serve as valid prescriptions that may be filled at a retail pharmacy,

25. Allow prescriptions refills to be dispensed early so long as the pharmacist documents a valid reason for doing so,

26. Move guidance language that outline packaging standards for dispensed prescriptions to these regulations,

27. Update special packaging rules to allow for electronic recordkeeping,

28. Limit the time that a bulk bin filling record must be maintained to one year and require a pharmacist's initials in this record as verification that he has checked the accuracy the bin,

29. Move guidance language for the re-dispensing of prescription drugs to these regulations,

30. Move guidance language that prohibits pharmacies from printing non-essential information on the front of prescription pads that they provide to prescribers to these regulations,

31. Allow licensed warehouses to sell Schedule II through VI drugs to pharmacies,

32. Allow nurses to access a "supply of drugs maintained by the pharmacy at a location outside of the pharmacy in order to obtain emergency medication during hours that the pharmacy is closed"; the location of any supply of medication in such cases must be kept secure,

33. Require pharmacists to check all Schedule II-VI drugs as floor stock before they are delivered to a hospital unit and to initial or sign that the record of distribution is accurate; all records will have to be maintained for two years,

34. Requires all records required for automated devices for dispensing and administration of drugs be retained for two years,

35. Allow intravenous solutions provided by a hospital pharmacy to an emergency services agency to be stored outside of a secured drug kit,

36. Allow pharmacies that serve long-term care facilities to repack residents' medicines as unit doses to facilitate dispensing of medication in an institutional setting,

37. Move guidance language that governs how prescription drugs may be sent outside of a long-term care facility (when the resident is leaving for a short time or is being discharged from the facility altogether) to these regulations,

38. Clarify rules governing emergency drug kits by listing the licensed entities that are allowed to access these kits,

39. Allow drugs stocked in automated dispensing devices that would be appropriate for an emergency drug kit to be accessed prior to authorization from a pharmacist if not accessing the drugs would threaten the survival of a patient; these devices will have to be able to produce a hard-copy record of all distributions,

40. Require training records for animal shelter and humane society staff that are trained to euthanize animals be retained for two years,

41. Allow correctional facilities greater flexibility to return drugs to a provider pharmacy accompanied by one of a number of forms that would contain the same information,

42. Clarify rules that govern application for controlled substances registration and

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43. Require any change in the responsible party for controlled substance registration to be reported to the Board within 14 days.

**Result of Analysis.** For many of these proposed changes, benefits likely outweigh the costs. For several other changes there is insufficient information to measure the magnitude of costs versus benefits. Costs and benefits for proposed changes are discussed below.

**Estimated Economic Impact.** About a quarter of the regulatory changes listed above (specifically, changes numbered 1, 9, 14, 16, 17, 19, 24, 26, 29, 30, 37, 38 and 42) are being made to bring greater clarity to these regulations. These changes are either standing Board policy being moved to regulation or other clarifications; for example, listing the specific licensed entities who are allowed to access emergency drug kits rather than stating that “only those persons licensed to administer drugs” are allowed access. These changes ought not represent a change in practice for regulated entities of the Board and, so, regulated entities will likely not incur any costs on account of these changes. Having these rules more clearly spelled out ought to, however, provide a benefit for individuals who are either affected by these regulations or are interested in knowing the rules under which Board licensees and certificate holders must operate.

Current regulations do not specify an expiration date for pharmacy continuing education or pharmacy technician training programs. Regulations for pharmacy continuing education classes state that continuing education programs must be approved by the Accreditation Council of Pharmacy Education (ACPE), be approved as a Category I continuing Medical Education (CME) course or be approved by the Board. While ACPE courses are not approved for more than two years before they have to be re-approved and CME courses already require periodic re-approval, there has been no such limitation on Board approved classes.

In order to make sure all types of continuing education classes are consistent and to insure that class materials and subjects are not outdated, the Board proposes to require that all Board approved continuing education classes expire after two years. After that, old but still relevant, and new programs can be approved by meeting Board criteria for continuing educational programs and paying the \$100 fee for program approval. Individuals and groups who teach continuing education programs approved by the Board will incur extra costs in time and resources for getting course materials re-approved, or for gathering and submitting new course material, and for the fee charged by the Board. Individuals who take continuing education classes that are Board approved will benefit from this regulatory change if continuing education classes do a better job of keeping course material current and relevant than they would absent Board action. Whether benefits for this change outweigh costs will

depend on whether courses improve enough, on average, to outweigh the costs of going through the program approval process again.

The Board also proposes to amend regulations to require pharmacy technician training programs be re-approved every two years and to add fees to the fee schedule to cover re-approval of a training program, late (within two years of approval expiration) re-approval of a program and reinstatement of approval of a program when approval has expired more than two years ago. These fees are \$75, \$15 and \$75, respectively. The Board proposes this change to address problems with programs that change instructors, programs that teach out-dated material and programs that just go out of business without informing the Board. Individuals and groups who teach training programs approved by the Board will incur extra costs in time and resources for getting course materials re-approved and for fees charged by the Board. Individuals who take continuing education classes that are Board approved will benefit from this regulatory change to the extent that it is easier to find correct information about available programs and to the extent that classes do a better job of keeping course material current and relevant. Whether benefits for this change outweigh costs will depend on whether the value of more accurate information on available courses plus the value of courses improvement, on average, outweighs the costs of re-approval.

Current regulations require that all robotic pharmacy systems be approved by the Board. The fee for this approval is \$150. The Board proposes to eliminate both the requirement that all robotic systems be approved by the Board and the fee that paid for staff time for that approval. Instead of requiring all pharmacies go through the time and expense of gaining approval for each robotic system, the Board proposes to put the requirements that are currently part of each approval order into the text of these regulations. These changes are likely to lower costs for pharmacies wanting to install these labor saving robotic systems while still protecting the public from any harm caused by prescription errors.

Current requirements that govern how and when pharmacy students can gain practical experience before they are licensed require licensure applicants who graduated from an approved school of pharmacy before January 1, 2003 to work at least 1,000 in a practical setting; at least 300 of those hours had to be worked outside of a school of pharmacy’s practical experience program. Students graduating after January 1, 2003 are required to complete 1,500 hours of practical experience, 300 of these hours outside of any school practical experience program, before they could be licensed.

Because ACPE accredited schools now require at least 1,700 hours of practical experience before graduation, the Board proposes to eliminate the requirement that pharmacy graduates gain 300 hours of experience outside of their school setting. The Board also proposes to eliminate the language

that allowed pre-2003 graduates to be licensed with only 1,000 hours of practical experience. The Board believes that any individuals who graduated that long ago and still have not been licensed likely would need the extra hours of practical experience should they choose to pursue licensure at this late date. Pharmacists who were licensed in other states that require fewer hours of pre-licensure practical experience, and who want to be licensed in Virginia, may count hours worked post-licensure toward practical experience requirements. Some individuals who graduated from pharmacy school before 2003 may incur extra costs for gaining practical experience if they choose to seek licensure after these amended regulations are promulgated. These costs are likely outweighed by the benefit to the public of ensuring individuals who have been out of school, and away from a pharmacy setting, for a number of years gain additional practical experience before they are licensed.

Current regulations only allow pharmacists to supervise one pharmacy intern and two pharmacy technician trainees at one time. Currently, pharmacists are allowed to supervise no more than four individuals performing technician functions (pharmacy technicians and pharmacy technician trainees) at one time. The Board proposes to eliminate these restrictions and allow pharmacists to determine how many interns, technician trainees and technicians he can safely and effectively supervise at one time. These proposed changes will give pharmacists greater flexibility to staff their pharmacy in the way that works most efficiently for them. Pharmacists will still be accountable for the accuracy of prescriptions that are dispensed under their supervision so these changes should not adversely affect the public.

Currently, foreign-trained pharmacy students are required to go through several steps before they are eligible for licensure. They must 1) obtain verification from the FPGEC that they are a graduate of a foreign school of pharmacy, 2) pass the Foreign Pharmacy Graduate Equivalency Examination (FPGEE), 3) pass the Test of English as a Foreign Language (TOEFL) or TOEFL iBT (internet based test), 4) pass the Test of Spoken English (TSE) and 5) complete practical experience requirements before they can sit for the other exams required for Virginia licensure. Regulations do not, however, list the order in which these steps must be accomplished. As a consequence, there has been some confusion as to whether foreign-trained pharmacy applicants need to prove proficiency in English before they become pharmacy interns.

The Board proposes to simplify rules for foreign-trained pharmacy graduates by removing requirements 1 through 4 in the preceding paragraph and, instead, only requiring that applicants obtain an FPGEC certificate. FPGEC verifies that applicants have graduated from a foreign school of pharmacy, that they have passed the FPGEE and that they are proficient in English. The Board also proposes to specify that an

FPGEC certificate must be obtained before foreign students can register as pharmacy interns and complete their practical experience requirements.

Only requiring a FPGEC certificate will likely eliminate duplicative record keeping on the part of the Board and the FPGEC. This will also save foreign-trained applicants for licensure some amount of time, effort and expense that they previously would have spent gathering all their records and getting them to Board staff. Requiring that these applicants attain FPGEC certification before they can complete practical experience hours may cause some applicants to incur costs (foregone wages, time spent waiting for the certification process to be completed, etc) that they would not have under the current regulatory scheme. Foreign-trained student interns, and the public they will work with, may, however, benefit from these interns mastering the language that is in predominant use in Virginia before they are thrown into situations where such proficiency is necessary.

Currently, there is no practical limit on the frequency with which applicants for pharmacy licensure can take the required jurisprudence exam. As a consequence, problems have arisen with the integrity of the test question bank. The Board proposes to require applicants who have failed this exam to wait 30 days before they take it again. This change may slightly inconvenience applicants but will also help insure that current test bank questions are not available to applicants before they actually take the test.

Current regulations do not contain a requirement that pharmacy interns report any changes of address of record to the Board. Since the Board has an interest in having a way to communicate with these interns, the Board proposes to require interns to report any change of address, in writing, within 14 day. Interns will likely incur minimal cost for complying with this requirement because they have the option of notifying the Board electronically. The benefit to them of the Board having a valid address (so they can get notices from the Board in a timely fashion) very likely outweigh the costs.

To make all such reporting consistent, the Board also proposes to lengthen the time that licensees have to report a change of address from "immediately" to 14 days, shorten the time that certificate holders have to report address changes from 30 days to 14 days (both of these groups can electronically correct this information on the Board's website), require pharmacy technician training programs to report any substantive changes within 14 days and require that any change in the responsible party for a controlled substances registration be reported within 14 days. Again the costs of these changes are likely very minimal, even for certificate holders whose time limit is being shortened. The benefits of having a consistent, easily remembered, standard likely outweigh any costs.

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Current regulations require licensees to maintain proof of continuing education completed for two years; continuing education providers are currently required to retain records for three years on all programs, program participants and continuing education hours earned through them. Because record auditing lags behind the renewal cycle, this can mean that some licensees will have gotten rid of half the records required for an audit before the audit can occur. The Board proposes to extend these record keeping requirements so that licensees will have to retain their records for three years and continuing education programs will have to retain their records for five years. These changes will increase record keeping costs for affected entities but will also make auditing these records for regulatory compliance much easier.

The Board has also addressed other record keeping requirements in this regulatory action. Records for drug floor stocks delivered to hospital units, records for automated devices for dispensing and administration of drugs, records of inventories for schedule II through VI and records that document euthanasia training for humane society workers will all need to be retained for two years. Although these record keeping requirements are new to regulations, they are already Board policy and are consistent with the time inspectors would be auditing drug records. Any increased record keeping costs that may be incurred by affected entities will likely be outweighed by the benefit of more effective drug auditing.

Currently, regulations require that program directors for pharmacy technician training programs have current, unrestricted pharmacy licenses. The Board proposes to allow pharmacists with restricted licenses to serve as directors of such programs. The Board feels that license restrictions should not preclude an otherwise qualified candidate from serving as a program director. This regulatory change will likely increase the number of pharmacists who are willing to take on this job. This may encourage more programs to open and may increase the number of pharmacy technicians available for employment in Virginia.

Current regulations do not require pharmacy technicians to keep their certificates where they are readily available for inspection. The Board proposes to require technicians to maintain their certificates at their principal place of employment. Technicians who work at more than one location will be able to maintain their certificates either at their address of record with the Board or at one of their workplaces. Technicians are unlikely to incur anything but trivial costs on account of this regulatory change. Any costs that are incurred will likely be outweighed by the benefit of having these certificates readily available for inspectors and any other interested parties.

Currently, regulations for permitting of pharmacies have many requirements and restrictions but there is no restriction on opening a pharmacy in a private residence. Two years

ago, an individual applied to operate a pharmacy in her garage. Since this space met all requirements for pharmacies, the Board issued a permit. The Board believes that a residential setting is not conducive to maintaining security and accountability of drug stocks, and is proposing to prohibit any other residences from being permitted as pharmacies. A Board representative reports that there have been no security violations or instances of drugs going missing from this residential pharmacy thus far. Individuals who may have wanted to open pharmacies in their residences at some point in the future would lose that opportunity on account of this proposed regulatory change. Whether the benefits of this proposed change outweigh the costs will depend on whether any actual improvements in drug security outweigh the profits lost to future entrepreneurs who might have chosen to open such a pharmacy.

Current regulations require pharmacies to take an inventory of schedule I through VI drugs at least biennially. The Board reports that, in the past, there have been instances where “tens of thousands of dosage units of (schedule II) drugs were diverted without detection for a year or more in some cases.” Because of this, the Board proposes to require that all pharmacies maintain a perpetual inventory of schedule II drugs and that this inventory be reconciled against actual drug stocks monthly. The Board reports that all hospital pharmacies and most chain drug stores already maintain a perpetual inventory but they may or may not review them for discrepancies on a monthly basis. This regulatory change may drive up costs for some pharmacies, particularly small pharmacies that don’t already have some kind of electronic record of drug stores. Overall, pharmacies may actually save money from an inventory system that helps them quickly catch or even prevent drug losses.

Currently there is no regulatory provision for pharmacies that go out of business to make sure their customers can still access pertinent records. Although this lack of regulatory provision is apparently not usually a problem, the Board reports that these records are a salable asset, there have been instances where pharmacies have closed and just abandoned customer records. The Board proposes to require that customer records be transferred to another pharmacy where customers can access them when the originating pharmacy closes. Both customers and receiving pharmacies will likely benefit from this required records transfer.

Current regulations contain very specific, prescriptive requirements for prescription department enclosures. For example, entrances to enclosed areas must currently have doors with no more than a six inch gap from the floor. The Board proposes to remove some of the more prescriptive requirements for these enclosures and instead allow pharmacies more flexibility in securing the drugs they are responsible for. Instead of exactly describing how far from the floor a door may be, for instance, the proposed regulations only stipulate that an enclosure must be capable of being

securely locked when the pharmacist is not present. This proposed change will benefit pharmacies which will now have the flexibility to meet security requirements in the most cost effective manner available. Since drugs will still be required to be secured, there will likely be no offsetting costs.

Current regulations only allow drugs to be destroyed by incineration. The Board proposes to also allow drugs to be destroyed in other Board approved ways. Although there are no methods for disposal of drugs currently that are as safe and effective as incineration, the Board wants the freedom to approve other methods when they are developed. This change will give the Board benefit of flexibility.

Current regulations do not allow prescriptions to be refilled early to accommodate patients who are, for instance, going on vacation. The Board proposes to allow pharmacists to dispense refills early so long as they can document good cause for doing so. This change will likely benefit pharmacy customers who will have greater flexibility to coordinate drug refills so that they do not interfere with other plans.

**Businesses and Entities Affected.** These regulatory changes will affect 1,647 pharmacies that are permitted in Virginia, 513 non-resident pharmacies, 9,491 pharmacists, 1,415 pharmacist interns, 8,750 pharmacist technicians and all pharmacist technician trainees working in the Commonwealth. These regulatory changes will also affect 613 controlled substance registrations and 34 humane societies.

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

**Projected Impact on Employment.** Requiring English proficiency before internship may lower in the short-term the number of foreign-trained pharmacy students that are available for employment as interns. This effect will likely be short lived as current and future students will adjust to the time-table of licensure requirements.

**Effects on the Use and Value of Private Property.** Putting an expiration date on continuing education programs and pharmacy technician training programs will increase costs for these programs. To the extent that these programs are a profit-making venture, these regulatory changes will likely decrease profits.

**Small Businesses: Costs and Other Effects.** The Department of Health Professions (DHP) reports that the number of pharmacies that qualify as small businesses is unknown but is likely a small minority of 1,647 pharmacies in Virginia. These businesses may incur some additional bookkeeping costs because of some of these regulatory changes. These costs will likely be outweighed by savings accrued on account of other regulatory changes in this action.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Absent proof that home pharmacies are

inherently more likely to be unsafe and non-securable, the Board may wish to reconsider banning licensure for pharmacies in private residences.

**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 Pharmacy concurs with the economic impact analysis (EIA) of the Department of Planning and Budget on proposed regulations resulting from a periodic review with one exception. On pages 10 and 11, the EIA questions whether benefits outweigh costs for persons who will not be allowed to open a pharmacy in a private residence. The primary concern of the board in restricting licensure of a pharmacy in a private residence is security of such a pharmacy and the inherent risk to the residents and neighbors. The availability of quantities of drugs in a private residence makes that location vulnerable to criminal activity. In 2005, there were 13 armed robberies of pharmacies and 17 night break-ins; in 2006, there were 11 armed robberies and 18 night break-ins in Virginia. In addition, there are numerous attempted robberies that are foiled or aborted. It appears to the board that there are significant costs in terms of public safety and loss of property, so the benefit of avoiding those costs would outweigh any lost entrepreneurial opportunity.

Summary:

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*The agency is amending regulations to address the numerous questions and recommendations that arose from the periodic review conducted by board members and advisors from all aspects of pharmacy practice. In some cases, there is a need for clarification of a rule; in others there is a need to amend the regulation to allow the practice of pharmacy to be more responsive to patient needs and changing times.*

*Some of the issues addressed include: (i) practical experience leading up to licensure by allowing interns to count hours within the school curriculum and by clearly delineating expiration dates for internships; (ii) oversight of continuing education approval by setting expiration dates for courses; (iii) guidance for free clinics to allow greater access to areas where drugs are kept; (iv) oversight of pharmacy technician training by setting a time limit on work by a person engaged in a program and an expiration for programs approved by the board; and (v) elimination of board approval of robotic systems by incorporating criteria for such systems in regulation.*

## Part I General Provisions

### 18VAC110-20-10. 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:

"ACPE" means the Accreditation Council for Pharmacy Education.

"Acquisition" of an existing entity permitted, registered or licensed by the board means (i) the purchase or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor or change in partnership composition; (iii) the acquiring of 50% or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; or (iv) the merger of a corporation owning the entity, or of the parent corporation of a wholly owned subsidiary owning the entity, with another business or corporation.

"Alternate delivery site" means a location authorized in 18VAC110-20-275 to receive dispensed prescriptions on behalf of and for further delivery or administration to a patient.

"Beyond-use date" means the date beyond which the integrity of a compounded, repackaged, or dispensed drug can no longer be assured and as such is deemed to be adulterated

or misbranded as defined in §§54.1-3461 and 54.1-3462 of the Code of Virginia.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Chart order" means a lawful order for a drug or device entered on the chart or in a medical record of a patient by a prescriber or his designated agent.

"Compliance packaging" means packaging for dispensed drugs which is comprised of a series of containers for solid oral dosage forms and which is designed to assist the user in administering or self-administering the drugs in accordance with directions for use.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Correctional facility" means any prison, penitentiary, penal facility, jail, detention unit, or other facility in which persons are incarcerated by government officials.

"DEA" means the United States Drug Enforcement Administration.

"Electronic transmission prescription" means any prescription, other than an oral or written prescription or a prescription transmitted by facsimile machine, that is electronically transmitted from a practitioner authorized to prescribe directly to a pharmacy without interception or intervention from a third party, or from one pharmacy to another pharmacy.

"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.

"Facsimile (FAX) prescription" means a written prescription or order which is transmitted by an electronic device over telephone lines which sends the exact image to the receiver (pharmacy) in a hard copy form.

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

"Floor stock" means a supply of drugs that have been distributed for the purpose of general administration by a prescriber or other authorized person pursuant to a valid order of a prescriber.

"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"Forgery" means a prescription that was falsely created, falsely signed, or altered.

"FPGEC certificate" means the certificate given by the Foreign Pharmacy Equivalency Committee of NABP that certifies that the holder of such certificate has passed the Foreign Pharmacy Equivalency Examination and a credential review of foreign training to establish educational equivalency to board approved schools of pharmacy, and has passed approved examinations establishing proficiency in English.

"Generic drug name" means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the USAN and the USP Dictionary of Drug Names.

"Hospital" or "nursing home" means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

"Inactive license" means a license which is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.

"Long-term care facility" means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

"NABP" means the National Association of Boards of Pharmacy.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

"On duty" means that a pharmacist is on the premises at the address of the permitted pharmacy and is available as needed.

"Permitted physician" means a physician who is licensed pursuant to §54.1-3304 of the Code of Virginia to dispense drugs to persons to whom or for whom pharmacy services are not reasonably available.

"Perpetual inventory" means an ongoing system for recording quantities of drugs received, dispensed or otherwise distributed, and drugs on hand by a pharmacy.

"Personal supervision" means the pharmacist must be physically present and render direct, personal control over the entire service being rendered or act being performed. Neither prior nor future instructions shall be sufficient nor, shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

"Pharmacy closing" means that the permitted pharmacy ceases pharmacy services or fails to provide for continuity of pharmacy services or lawful access to patient prescription records or other required patient records for the purpose of continued pharmacy services to patients.

"Pharmacy technician trainee" means a person who is currently enrolled in an approved pharmacy technician training program and is performing duties restricted to pharmacy technicians for the purpose of obtaining practical experience in accordance with §54.1-3321 D of the Code of Virginia.

"PIC" means the pharmacist-in-charge of a permitted pharmacy.

"Practice location" means any location in which a prescriber evaluates or treats a patient.

"Prescription department" means any contiguous or noncontiguous areas used for the compounding, dispensing and storage of all Schedule II through VI drugs and devices and any Schedule I investigational drugs.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for voluntary examination and certification of pharmacy technicians.

"Quality assurance plan" means a plan approved by the board for ~~continuous~~ ongoing monitoring, measuring, evaluating, and, if necessary, improving the performance of a pharmacy function or system.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Robotic pharmacy system" means a mechanical system controlled by a computer that performs operations or activities relative to the storage, packaging, labeling, dispensing, or distribution of medications, and collects, controls, and maintains all transaction information.

"Safety closure container" means a container which meets the requirements of the federal Poison Prevention Packaging Act of 1970 (15 USC §§1471-1476), i.e., in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five-minute period and that 80% fail in another five minutes after a demonstration of how to open it and that 90% of a test

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group of 100 adults must be able to open and close the container.

"Satellite pharmacy" means a pharmacy which is noncontiguous to the centrally permitted pharmacy of a hospital but at the location designated on the pharmacy permit.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open to obtain a toxic or harmful amount of the drug contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"Special use permit" means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

"Storage temperature" means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

1. "Cold" means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).
2. "Room temperature" means the temperature prevailing in a working area.
3. "Controlled room temperature" means a temperature maintained thermostatically that encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F); that results in a mean kinetic temperature calculated to be not more than 25°C; and that allows for excursions between 15° and 30°C (59° and 86°F) that are experienced in pharmacies, hospitals, and warehouses.
4. "Warm" means any temperature between 30° and 40°C (86° and 104°F).
5. "Excessive heat" means any temperature above 40°C (104°F).
6. "Protection from freezing" means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to the destructive alteration of its characteristics, the container label bears an appropriate instruction to protect the product from freezing.
7. "Cool" means any temperature between 8° and 15°C (46° and 59°F).

"Terminally ill" means a patient with a terminal condition as defined in §54.1-2982 of the Code of Virginia.

"Unit dose container" means a container that is a single-unit container, as defined in United States Pharmacopeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a system in which multiple drugs in unit dose packaging are dispensed in a single container, such as a medication drawer or bin, labeled only with patient name and location. Directions for administration are not provided by the pharmacy on the drug packaging or container but are obtained by the person administering directly from a prescriber's order or medication administration record.

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

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

## 18VAC110-20-20. Fees.

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

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	\$180
2. Pharmacy intern registration	\$15
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Permitted physician licensed to dispense drugs	\$270
6. Medical equipment supplier permit	\$180
7. Humane society permit	\$20
8. Nonresident pharmacy	\$270
9. Controlled substances registrations (Between November 2, 2005, and December 31, 2006, the application fee for a controlled substance registration shall be \$50)	\$90
<del>10. Robotic pharmacy system approval</del>	<del>\$150</del>
<del>11. 10. Innovative program approval.</del>	<del>\$250</del>

If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.

~~12.~~ 11. Approval of a pharmacy technician training program \$150

~~13.~~ 12. Approval of a continuing education program \$100

D. Annual renewal fees.

1. Pharmacist active license \$90

2. Pharmacist inactive license \$45

3. Pharmacy technician registration \$25

4. Pharmacy permit \$270

5. Physician permit to practice pharmacy \$270

6. Medical equipment supplier permit \$180

7. Humane society permit \$20

8. Nonresident pharmacy \$270

9. Controlled substances registrations \$90

10. Innovative program continued approval based on board order not to exceed \$200 per approval period.

11. Approval of a pharmacy technician training program \$75 every two years

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date or within two years in the case of a pharmacy technician training program. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license \$30

2. Pharmacist inactive license \$15

3. Pharmacy technician registration \$10

4. Pharmacy permit \$90

5. Physician permit to practice pharmacy \$90

6. Medical equipment supplier permit \$60

7. Humane society permit \$5

8. Nonresident pharmacy \$90

9. Controlled substances registrations \$30

10. Approval of a pharmacy technician training program \$15

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license \$210

2. Pharmacist license after revocation or suspension \$500

3. Pharmacy technician registration \$35

4. Pharmacy technician registration after revocation or suspension \$125

5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Pharmacy permit \$240

b. Physician permit to practice pharmacy \$240

c. Medical equipment supplier permit \$210

d. Humane society permit \$30

e. Nonresident pharmacy \$115

f. Controlled substances registration \$180

g. Approval of a pharmacy technician training program \$75

G. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge \$50

2. Change of ownership for any facility \$50

3. Inspection for remodeling or change of 150

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location for any facility	
4. Reinspection of any facility	\$150
5. Board-required inspection for a robotic pharmacy system	\$150
6. Board-required inspection of an innovative program location	\$150
7. Change of pharmacist responsible for an approved innovative program	\$25

## H. Miscellaneous fees.

1. Duplicate wall certificate	\$25
2. Returned check	\$35

~~I. For the annual renewal due on or before December 31, 2006, the following fees shall be imposed for a license, permit or registration:~~

1. Pharmacist active license	\$50
2. Pharmacist inactive license	\$25
3. Pharmacy technician registration	\$15
4. Pharmacy permit	\$210
5. Physician permit to practice pharmacy	\$210
6. Medical equipment supplier permit	\$140
7. Humane society permit	\$20
8. Nonresident pharmacy	\$210
9. Controlled substances registrations	\$50

## Part II

### Licensure Requirements for Pharmacists

#### **18VAC110-20-30. Requirements for pharmacy practical experience.**

~~A. Each applicant for licensure by examination as a pharmacist shall have gained practical experience in the practice of pharmacy, to include no less than 300 hours in the area of prescription compounding and dispensing within a pharmacy as set forth in this section and 18VAC110-20-40.~~

~~B. An applicant who graduated from an approved school of pharmacy after January 1, 2003 shall accumulate for licensure as a pharmacist shall attain a minimum of 1,500 hours of practical experience, of which at least 300 hours shall be gained outside of a school of pharmacy practical experience program. For purposes of this chapter, credit will not be given for more than 50 hours in any one week. Applicants who graduated from an approved school of pharmacy prior to January 1, 2003 shall have gained at least 1,000 hours of practical experience.~~

C. Practical experience that is gained within an ACPE-accredited school of pharmacy, that conforms to the current

ACPE standards, and that allows the student to gain at least 1,500 hours of practical experience, shall meet the board's practical experience requirements for licensure as a pharmacist.

~~C. D. All practical experience credit required gained outside of an ACPE-accredited school of pharmacy program shall only be gained after successful completion of the first professional year in an approved school of pharmacy equivalent of at least two semesters in an ACPE-accredited school of pharmacy. Credit shall not be given for more than 50 hours in one week and not less than an average of 20 hours per week averaged over a month. The board may grant an exception to the minimum number of hours for good cause shown.~~

~~D. Practical experience gained in a school of pharmacy which has a program designed to provide the applicant with practical experience in all phases of pharmacy practice and which program is approved by the American Council on Pharmaceutical Education will be accepted by the board for the time period during which the student is actually enrolled. The applicant will be required to gain any additional experience outside the school program as needed to meet the requirements of subsections A and B of this section.~~

E. In accordance with §54.1-3312 of the Code of Virginia, all practical experience required by this section shall be gained within the United States.

#### **18VAC110-20-40. Procedure for gaining practical experience.**

~~A. Each pharmacy student or graduate of an approved school of pharmacy who desires to gain practical experience in a pharmacy within the Commonwealth shall person desiring to gain practical pharmacy experience in Virginia shall first register with the board as a pharmacy intern on a form provided by the board prior to becoming so engaged as a pharmacy intern. This requirement shall also apply to students any person gaining practical experience within the Commonwealth whether for licensure in Virginia or in another state.~~

B. In order to be eligible to register as a pharmacy intern, an applicant shall meet at least one of the following criteria:

1. The applicant shall be enrolled in and have started course work in a professional degree program of a board-approved school of pharmacy. Such registration is only valid while the student is enrolled in the school of pharmacy and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist. An expiration date shall be assigned to the registration to cover the estimated time period for the student to complete the school program and pass the required examinations. If the student is no longer enrolled in the school program, takes a voluntary break from the program, or is otherwise not actively participating in the school program, except for

regularly scheduled school breaks, the registration is no longer valid and shall be returned to the board immediately;

2. The applicant is a graduate of a board-approved school of pharmacy or a graduate of a foreign school of pharmacy, has established educational equivalency and proficiency in English by obtaining the FPGEC certificate, and desires to gain required practical experience required for licensure as a pharmacist. Such applicant shall provide documentation on a board-approved form of current employment or an employment start date within 90 days in a pharmacy in Virginia with approval by the supervising pharmacist. An expiration date shall be assigned to cover the estimated time period needed to obtain the required practical experience hours and take the required examinations to become licensed as a pharmacist;

3. The applicant has already gained the required practical experience, but is an otherwise qualified applicant awaiting examination for licensure. A three-month expiration date shall be assigned to allow the applicant time to take required examinations; or

4. The applicant is an applicant for reactivation or reinstatement of a previously issued pharmacist license and is meeting board requirements for relicensure. An expiration date shall be assigned to reasonably cover the period of time necessary to meet the board requirements.

C. For documented, good cause shown, the executive director of the board may extend the expiration date of the intern registration upon submission of an application form approved by the board and payment of the initial application fee.

~~B. The applicant~~ D. A pharmacy intern shall be supervised by a pharmacist who holds ~~an~~ a current, unrestricted license and assumes full responsibility for the training, supervision and conduct of the intern. ~~The supervising pharmacist shall not supervise more than one pharmacy intern during the same time period.~~

~~C.~~ E. The intern registration of a pharmacy student shall be valid only while the student is enrolled in a school of pharmacy. The registration card issued by the board shall be returned to the board upon failure to be enrolled.

~~D.~~ F. Practical experience gained within any other state must be registered with and certified by the board of that state in order to be accepted or certified by this board. In the event that a state does not use internships to gain practical experience in pharmacy but relies on the pharmacy school to certify the hours of experience, an affidavit from the pharmacy school certifying the hours of experience gained in the United States may be accepted in lieu of board certification.

~~E.~~ G. All practical experience of the pharmacy intern shall be evidenced by an affidavit approved by the board, which shall be filed prior to or with the application for examination for licensure.

~~F.~~ H. An applicant for licensure by endorsement may provide verification acceptable to the board of practical experience hours worked as a pharmacist in another state within the United States in lieu of prelicensure intern hours in order to meet the practical experience requirement

I. A pharmacy intern shall notify the board in writing of any change in address of record within 14 days of such change.

**18VAC110-20-50. Curriculum and approved schools of pharmacy.**

A. The following minimum educational requirements for the specified periods shall be recognized by the board for the purpose of licensure.

~~1. On and after June 1, 1928, but before June 1, 1936, the applicant for licensure shall have been graduated from a three year course of study with a pharmacy graduate or pharmacy college degree in pharmacy awarded.~~

~~2.~~ 1. On and after June 1, 1936, but before June 1, 1964, the applicant for licensure shall have been graduated from a four-year course of study with a Bachelor of Science degree in pharmacy awarded.

~~3.~~ 2. On and after June 1, 1964, the applicant for licensure shall have been graduated from at least a five-year course of study with a Bachelor of Science degree in pharmacy or a Doctorate of Pharmacy degree awarded.

B. In order to be licensed as a pharmacist within this Commonwealth, the applicant shall have been granted the first professional degree from a program of a school of pharmacy which meets the requirements of §54.1-3312 of the Code of Virginia.

**18VAC110-20-60. Content of the examination and grades required; limitation on admittance to examination.**

A. Prior to admission to any examination required for licensure, the applicant shall have met all other requirements to include education and practical experience requirements, but in no case shall the applicant be admitted if grounds exist to deny licensure under §54.1-3316 of the Code of Virginia.

B. The applicant shall achieve a passing score as determined by the board on the licensure examination which is approved by the board and which shall consist of an integrated examination of pharmacy practice, pharmacology, pharmacy mathematics, and such other subjects as are necessary to assure that the candidate possesses the necessary knowledge and skills to practice pharmacy.

~~C. The applicant shall also achieve a passing score as determined by the board on an examination which tests the~~

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~~candidate's knowledge of federal and state laws related to pharmacy practice.~~

~~D. C.~~ When an applicant for licensure by examination fails to meet the passing requirements of the board-approved integrated pharmacy examination on three occasions, he shall not be readmitted to the examination until he has completed an additional 1,000 hours of practical experience as a pharmacy intern as set forth in 18VAC110-20-40.

D. The applicant shall also achieve a passing score as determined by the board on an examination that tests the candidate's knowledge of federal and state laws related to pharmacy practice.

E. When an applicant fails to pass the law examination, he shall not be allowed to retake it for a period of 30 days.

F. If an applicant requests a testing accommodation for either examination based on a physical or mental impairment that substantially limits one or more major life activities, subject to the Americans with Disabilities Act, the board may approve a reasonable accommodation that does not compromise the security or integrity of the examination.

1. Supporting documentation shall be provided by the applicant to include the following to be considered for review:

a. A letter of request from the candidate that specifies the testing accommodation requested;

b. A written report of an evaluation (educational, psychological, or physical) within the preceding two years from a qualified professional that states a diagnosis of the disability, describes the disability, recommends specific accommodations, and provides justification that the accommodation is appropriate and necessary for the diagnosed disability. If the comprehensive evaluation was done more than two years ago and the condition is one that is not subject to change, the original evaluation report may be submitted along with a current letter from the qualified professional stating that there has been no change in the condition since the time of the evaluation; and

c. A written statement from the appropriate person at the applicant's school of pharmacy that describes any testing accommodations made while the student was enrolled, if applicable.

2. The applicant will be notified in writing of the decision. If the request for accommodation is granted, the approval information will be forwarded to the examination contractor and the form of the accommodation will be coordinated with the contractor.

## **18VAC110-20-70. Requirements for foreign-trained applicants.**

~~A. Applicants for licensure who were trained in foreign schools of pharmacy shall meet the following additional requirements obtain the FPGEC certificate prior to being allowed to take the examinations required by 18VAC110-20-60; register as a pharmacy intern and gain required practical experience in Virginia.~~

~~1. Obtain verification from the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy (NABP) that the applicant is a graduate of a foreign school of pharmacy.~~

~~2. Complete and receive a score acceptable to the board on the Foreign Pharmacy Graduate Equivalency Examination (FPGEE).~~

~~3. Complete and receive a score acceptable to the board on the Test of English as a Foreign Language (TOEFL) or on the TOEFL iBT, the Internet based tests of listening, reading, speaking and writing.~~

~~4. Complete the Test of Spoken English (TSE) or the TOEFL iBT as given by the Educational Testing Service with a score acceptable to the board.~~

~~5. Fulfill B. After obtaining the FPGEC certificate, the applicant may apply for a pharmacy intern registration and shall fulfill the requirements for practical experience as prescribed set forth in 18VAC110-20-30 A, B and E and 18VAC110-20-40 A, B, D, E and F before being admitted to examinations required by 18VAC110-20-60.~~

~~B. C.~~ Applicants for licensure who were trained in foreign schools of pharmacy shall also complete and achieve passing scores on the examinations as prescribed set forth in 18VAC110-20-60 before being licensed as a pharmacist.

## **18VAC110-20-80. Renewal and reinstatement of license.**

A. Pharmacist licenses expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee, renewal form, and statement of compliance with continuing education requirements.

B. A pharmacist newly licensed on or after October 1 shall not be required to renew that license until December 31 of the following year.

C. A pharmacist who fails to renew his license by the expiration date may renew his license at any time within one year of its expiration by submission of the renewal fee and late fee, renewal form, and statement of compliance with continuing education requirements.

D. A pharmacist who fails to renew his license for more than one year following expiration and who wishes to reinstate such license shall submit an application for reinstatement, pay the current renewal fee and a reinstatement fee, and submit

documentation showing compliance with continuing education requirements. Reinstatement is at the discretion of the board and may be granted by the executive director of the board provided no grounds exist to deny said reinstatement.

E. A pharmacist who has been registered as inactive for more than one year must apply for reinstatement, submit documentation showing compliance with continuing education requirements, and pay the current year active renewal fee in order to resume active licensure.

F. In order to reactivate or reinstate a license to active status, a pharmacist who holds an inactive license, who has allowed his license to lapse, or who has had his license suspended or revoked must submit evidence of completion of CEU's or hours equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 60 hours of CE.

G. A pharmacist whose license has been lapsed, in inactive status, or suspended or revoked for more than five years shall, as a condition of reinstatement in addition to 60 hours CE, take and receive a passing score on the board-approved law examination and furnish acceptable documentation of one of the following:

1. Active pharmacy practice within the past five years as a properly licensed pharmacist in another state; or
2. Practical experience as a pharmacy intern registered with the board of at least 160 hours within six months immediately prior to being reinstated.

H. The practice of pharmacy without a current, active pharmacist license is unlawful and shall constitute grounds for disciplinary action by the board.

I. It shall be the duty and responsibility of each licensee to inform the board of his current address. A licensee shall ~~immediately~~ notify the board within 14 days in writing or electronically of any change of an address of record. Properly updating address of record directly through the board's web-based application or other approved means shall constitute lawful notification. All notices required by law or by these rules and regulations are deemed to be legally given when mailed to the address given of record and shall not relieve the licensee of the obligation to comply.

**18VAC110-20-90. Requirements for continuing education.**

A. ~~On and after December 31, 1993,~~ a A pharmacist shall be required to have completed a minimum of 1.5 CEUs or 15 contact hours of continuing pharmacy education in an approved program for each annual renewal of licensure. CEUs or hours in excess of the number required for renewal may not be transferred or credited to another year.

B. A pharmacy education program approved for continuing pharmacy education is:

1. One that is approved by the Accreditation Council for Pharmacy Education (ACPE);
2. One that is approved as a Category I Continuing Medical Education (CME) course, the primary focus of which is pharmacy, pharmacology or drug therapy; or
3. One that is approved by the board in accordance with the provisions of 18VAC110-20-100.

C. The board may grant an extension pursuant to ~~§54.1-3314~~ §54.1-3314.1 E of the Code of Virginia. Any subsequent extension shall be granted only for good cause shown.

D. Pharmacists are required to attest to compliance with CE requirements in a manner approved by the board at the time of their annual license renewal. Following each renewal period, the board may conduct an audit of the immediate past two years' CE documents to verify compliance with requirements. Pharmacists are required to maintain, for ~~two~~ three years following renewal, the original certificates documenting successful completion of CE, showing date and title of the CE program or activity, the number of CEU's or contact hours awarded, and a certifying signature or other certification of the approved provider. Pharmacists selected for audit must provide these original documents to the board by the deadline date specified by the board in the audit notice.

**18VAC110-20-100. Approval of continuing education programs.**

A. The board will approve without application or further review any program offered by an ACPE-approved provider and will accept for credit certificates bearing the official ACPE logo and program number.

B. The board may approve an individual CE program under the following provisions:

1. An approved individual program is a course, activity, or lecture which includes subject matter related to the competency of the practice of pharmacy and which has been approved for CE credit by the board.
2. In order to receive approval for an individual program, the sponsor or provider must ~~make application~~ apply prior to the program offering on a form provided by the board. The information which must be provided shall include but not be limited to: name of provider, location, date and time of program, charges to participants, description of program content and objectives, credentials of speaker or author, method of delivery, evaluation procedure, evidence of a ~~pre and post test assessment~~, credits requested, mechanism for recordkeeping, and any such information as the board deems necessary to assure quality and compliance.
3. The sponsor ~~making application~~ applying for board approval of an individual program must pay a fee as required in 18VAC110-20-20 C 18.

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4. The board shall notify the provider or sponsor within 60 days following the receipt of a completed application of approval or disapproval of a program and the number of credits which may be awarded. The board shall also assign an expiration date for approval of the program not to exceed two years from the date of approval.

5. The provider of an approved program shall provide to each participant who completes the required hours and passes the post test a certification with the name of the provider, name of the participant, description of course and method of delivery, number of hours credited, date of completion, and program identification number.

6. The provider of an approved program shall maintain all records on that program, its participants, and hours awarded for a period of ~~three~~ five years and shall make those records available to the board upon request.

7. The board shall periodically review and monitor programs. The provider of a CE program shall waive registration fees for a representative of the board for that purpose.

8. Any changes in the information previously provided about an approved program or provider must be submitted or the board may withdraw its approval. If a provider wants to give a live program more than once, all program dates must either be submitted on the original application or provided to the board in subsequent correspondence at least five days prior to giving the program.

## Part III

### Requirements for Pharmacy Technician Registration

#### **18VAC110-20-101. Application for registration as a pharmacy technician.**

A. Any person wishing to apply for registration as a pharmacy technician shall submit the application fee and an application on a form approved by the board.

B. In order to be registered as a pharmacy technician, an applicant shall provide evidence of the following:

1. Satisfactory completion of an approved training program, and
2. A passing score on a board-approved examination.

C. In lieu of the requirements of subsection B of this section, an applicant may provide evidence of current PTCB certification.

D. A pharmacy technician trainee may perform tasks restricted to pharmacy technicians for no more than nine months without becoming registered as a pharmacy technician.

#### **18VAC110-20-102. Criteria for approval for training programs.**

A. Any person wishing to apply for approval of a pharmacy technician training program shall submit the application fee and an application on a form approved by the board and meet the criteria established in this section.

B. The curriculum of a training program for pharmacy technicians shall include instruction in applicable, current laws and regulations and in the tasks that may be performed by a pharmacy technician to include the following or any other task restricted to pharmacy technicians in regulation:

1. The entry of prescription information and drug history into a data system or other recordkeeping system;
2. The preparation of prescription labels or patient information;
3. The removal of the drug to be dispensed from inventory;
4. The counting, measuring, or compounding of the drug to be dispensed;
5. The packaging and labeling of the drug to be dispensed and the repackaging thereof;
6. The stocking or loading of automated dispensing devices or other devices used in the dispensing process; and
7. The acceptance of refill authorization from a prescriber or his authorized agent provided there is no change to the original prescription.

~~C. Instructors~~ Each program shall have a program director who shall be either (i) a pharmacist with a current ~~unrestricted~~ license in any jurisdiction and who is not currently suspended or revoked in any jurisdiction in the United States; (ii) a pharmacy technician with at least one year of experience performing technician tasks who holds a current ~~unrestricted~~ registration in Virginia or a current PTCB certification and who is not currently suspended or revoked as a pharmacy technician in any jurisdiction; or (iii) other person approved and deemed qualified by the board to be an ~~instructor~~ a program director.

D. Instructors for the core components listed in subsection B of this section shall meet the requirements for the program director listed in subsection C of this section. The program director may serve as an instructor.

~~D.~~ E. The length of the program shall be sufficient to prepare a program participant to sit for the board-approved examination and demonstrate entry-level competency.

~~E.~~ F. The program shall maintain records of program participants either on-site or at another location where the records are readily retrievable upon request for inspection. A program shall provide a certificate of completion to participants who successfully complete the program and provide verification of completion of the program for a

participant upon request by the board. Records shall be maintained for two years from date of completion or termination of program.

G. The program shall report within 14 days any substantive change in the program to include a change in program name, program director, instructors, name of institution or business if applicable, address, program content, length of program, or location of records.

H. A pharmacy technician training program approval expires after two years, after which the program may apply for renewal. For continued approval, the program shall submit the renewal application, renewal fee, and a self-evaluation report on a form provided by the board at the time of renewal notification. Renewal of a program's approval is at the discretion of the board, and the decision to renew shall be based on documentation of continued compliance with the criteria set forth in this section.

#### **18VAC110-20-103. Examination.**

A. The board shall approve one or more examinations to test entry-level competency for pharmacy technicians. In order to be approved, a competency examination shall be developed in accordance with and meet the recognized acceptable test measurement standards of the Joint Technical Standards for Education and Psychological Testing (American Psychological Association, current edition), and shall be administered by an independent third party.

B. The board may contract with an examination service for the development and administration of a competency examination.

C. The board shall determine the minimum passing standard on the competency examination.

D. Any requests for testing accommodations under the Americans with Disabilities Act shall be in accordance with the provisions of 18VAC110-20-60 F.

#### **18VAC110-20-104. Address of record; maintenance of certificate.**

A. It shall be the duty and responsibility of each pharmacy technician to inform the board of his current address. A pharmacy technician shall notify the board in writing or electronically of any change of an address of record within 30 14 days. Properly updating address of record directly through the board's web-based application or other approved means shall constitute lawful notification. All notices required by law or by these rules and regulations are deemed to be legally given when mailed to the address given of record and shall not relieve the registrant of the obligation to comply.

B. A pharmacy technician shall maintain his current registration certificate at his principal place of practice available for inspection upon request. A pharmacy technician who does not have a principal place of practice may maintain

it at any pharmacy in which he practices or his address of record.

#### **18VAC110-20-106. Requirements for continued competency.**

A. A pharmacy technician shall be required to have completed a minimum of 0.5 CEUs or five contact hours of approved continuing education for each annual renewal of registration. Hours in excess of the number required for renewal may not be transferred or credited to another year.

B. An approved continuing education program shall meet the requirements as set forth in subsection B of ~~18VAC110-20-90~~ 18VAC110-20-100.

C. Upon written request of a pharmacy technician, the board may grant an extension of up to one year in order for the pharmacy technician to fulfill the continuing education requirements for the period of time in question. The granting of an extension shall not relieve the pharmacy technician from complying with current year requirements. Any subsequent extension shall be granted for good cause shown.

D. Original certificates showing successful completion of continuing education programs shall be maintained by the pharmacy technician for a period of ~~two~~ three years following the renewal of his registration. The pharmacy technician shall provide such original certificates to the board upon request in a manner to be determined by the board.

#### Part IV Pharmacies

#### **18VAC110-20-110. Pharmacy permits generally.**

A. A pharmacy permit shall not be issued to a pharmacist to be simultaneously in charge of more than two pharmacies.

B. The pharmacist-in-charge (PIC) or the pharmacist on duty shall control all aspects of the practice of pharmacy. Any decision overriding such control of the PIC or other pharmacist on duty shall be deemed the practice of pharmacy and may be grounds for disciplinary action against the pharmacy permit.

C. When the PIC ceases practice at a pharmacy or no longer wishes to be designated as PIC, he ~~shall take a complete and accurate inventory of all Schedule II through V controlled substances on hand and~~ shall immediately return the pharmacy permit to the board indicating the effective date on which he ceased to be the PIC.

D. Although not required by law or regulation, an outgoing PIC shall have the opportunity to take a complete and accurate inventory of all Schedule II through V controlled substances on hand on the date he ceases to be the PIC, unless the owner submits written notice to the board showing good cause as to why this opportunity should not be allowed.

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E. A PIC who is absent from practice for more than 30 consecutive days shall be deemed to no longer be the PIC. Pharmacists-in-charge having knowledge of upcoming absences for longer than 30 days shall be responsible for notifying the board, returning the permit, and taking the required inventory. For unanticipated absences by the PIC, which exceed 15 days with no known return date within the next 15 days, the owner shall immediately notify the board and shall obtain a new PIC.

~~D.~~ F. An application for a permit designating the new PIC shall be filed with the required fee within 14 days of the original date of resignation or termination of the PIC on a form provided by the board. It shall be unlawful for a pharmacy to operate without a new permit past the 14-day deadline unless the board receives a request for an extension prior to the deadline. The executive director for the board may grant an extension for up to an additional 14 days for good cause shown.

G. Only one pharmacy permit shall be issued to conduct a pharmacy occupying the same designated prescription department space. A pharmacy shall not engage in any other activity requiring a license or permit from the board, such as manufacturing or wholesale-distributing, out of the same designated prescription department space.

H. Before any permit is issued, the applicant shall attest to compliance with all federal, state and local laws and ordinances. A pharmacy permit shall not be issued to any person to operate from a private dwelling or residence after (effective date of this subsection).

## **18VAC110-20-111. Pharmacy technicians.**

A. Every pharmacy that employs or uses pharmacy technicians shall maintain a site-specific training program and manual for training pharmacy technicians to work at that pharmacy. The program shall include training consistent with that specific pharmacy practice to include, but not be limited to, training in proper use of site-specific computer programs and equipment, proper use of other equipment used at the pharmacy in performing technician duties, and pharmacy calculations consistent with the duties at that pharmacy.

B. Every pharmacy shall maintain documentation of successful completion of the site specific training program for each pharmacy technician for the duration of the employment and for a period of two years from date of termination of employment. Documentation for currently employed pharmacy technicians shall be maintained on site or at another location where the records are readily retrievable upon request for inspection. After employment is terminated, such documentation may be maintained at an off-site location where it is retrievable upon request.

C. Every pharmacy that employs or uses a person enrolled in an approved pharmacy technician training program pursuant to §54.1-3321 D of the Code of Virginia shall allow such

person to conduct tasks restricted to pharmacy technicians for no more than nine months without that person becoming registered as a pharmacy technician with the board as set forth in 18VAC110-20-101. Every pharmacy using such a person shall have documentation on site and available for inspection showing that the person is currently enrolled in an approved training program and the start date for each pharmacy technician in training.

## **18VAC110-20-120. Special or limited-use pharmacy permits.**

A. For good cause shown, the board may issue a special or limited-use pharmacy permit, when the scope, degree or type of pharmacy practice or service to be provided is of a special, limited or unusual nature as compared to a regular pharmacy service. The permit to be issued shall be based on special conditions of use requested by the applicant and imposed by the board in cases where certain requirements of regulations may be waived. The following conditions shall apply:

1. The application shall list the regulatory requirements for which a waiver is requested and a brief explanation as to why each requirement should not apply to that practice.
2. A policy and procedure manual detailing the type and method of operation, hours of operation, schedules of drugs to be maintained by the pharmacy, and method of documentation of continuing pharmacist control must accompany the application.
3. The issuance and continuation of such permits shall be subject to continuing compliance with the conditions set forth by the board.

B. For a special-use pharmacy located in or providing services to a free clinic that uses volunteer pharmacists on a part-time basis with pharmacy business hours less than 20 hours a week, the board may grant a waiver to the restricted access provisions of 18VAC110-20-190 under the following conditions:

1. The access is only for the purpose of repairing or upgrading essential equipment or for the purpose of securing a delivered drug order in the pharmacy.
2. The PIC shall be notified prior to each entry and give permission for the designated, specific individuals to enter.
3. If entry is by a nonpharmacist, two persons must enter together, one of whom must be an employee or volunteer of the free clinic who holds a license as a nurse, physician, or a physician assistant. Both persons must remain in the pharmacy the entire time that access is required.
4. The key or other means of unlocking the pharmacy and the alarm access code shall be maintained in a secure location within the facility in a sealed envelope or other container with the name of the "sealing" pharmacist written across the seal. If a nonpharmacist accesses the pharmacy,

this means of access may be used, and the licensed health professional, as set forth in subdivision 3 of this subsection, is responsible for resealing the means of access and writing his name across the seal. The PIC shall ensure that the alarm access code is changed within 48 hours. In lieu of the pharmacist's signature across a seal, the executive director for the board may approve other methods of securing the emergency access to the prescription department.

5. A log must be maintained of each nonpharmacist entry showing date and time of entry, names of the two persons entering, purpose for entry, and notation that permission was granted by the pharmacist-in-charge and the date it was granted. Such log shall be maintained on premises for one year.

**18VAC110-20-130. Pharmacy closings; going out of business; change of ownership.**

A. At least 14 days prior to the date a pharmacy closes in accordance with §54.1-3434.01 of the Code of Virginia or goes out of business, the owner shall notify the board. The proposed disposition of all Schedule II through VI drugs, prescription dispensing records, patient information records, and other required records shall be reported to the board. If the pharmacy drug stock and records are to be transferred to another licensee, the owner shall inform the board of the name and address of the licensee to whom the drugs and records are being transferred and the date of transfer. Prescription records for prescriptions with active refills shall be transferred to another pharmacy where a patient may obtain access for the purpose of obtaining refills either at that location or in accordance with the transfer provisions of 18VAC110-20-360.

B. Exceptions to the public notice as required in §54.1-3434.01 of the Code of Virginia and the notice required in subsection A of this section shall be approved by the board and may include sudden closing due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy, or other emergency circumstances. If the pharmacy is not able to meet the notification requirements of §54.1-3434.01, the owner shall ensure that the board and public are properly notified as soon as he knows of the closure and shall disclose the emergency circumstances preventing the notification within the required deadlines.

C. In the event of an exception to the notice as required in §54.1-3434.01 of the Code of Virginia and in subsection A of this section, the PIC or owner shall provide notice as far in advance of closing as allowed by the circumstances.

D. At least 14 days prior to any change in ownership of an existing pharmacy, the owner shall notify the board of the pending change.

1. Upon any change in ownership of an existing pharmacy, the prescription dispensing records for the two years immediately preceding the date of change of ownership and other required patient information shall be provided to the new owners on the date of change of ownership in substantially the same format as previously used immediately prior to the transfer to provide continuity of pharmacy services.

2. The previous owner shall be held responsible for assuring the proper and lawful transfer of records on the date of the transfer.

3. The format of the prescription dispensing records which are transferred to a new owner shall comply with the requirements of Chapter 34 (§54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, and this chapter. Failure to comply with this chapter during a change in ownership shall be deemed to be a closing of the existing pharmacy for which the existing pharmacy owner shall be required to provide notice to the board and public in accordance with §54.1-3434.01 of the Code of Virginia and subsection A of this section.

**18VAC110-20-140. New pharmacies, acquisitions and changes to existing pharmacies.**

A. Any person wishing to open a new pharmacy, engage in the acquisition of an existing pharmacy, change the location of an existing pharmacy, move the location or make structural changes to an existing prescription department, or make changes to a previously approved security system shall file an application with the board.

B. In the acquisition of an existing pharmacy, if prescription records are to be accessible to anyone for purposes other than for continuity of pharmacy services at substantially the same level offered by the previous owner or for the necessary transfer of prescription records, the owner of the pharmacy acquiring the records shall disclose such information in writing to each patient 14 days prior to the acquisition. Such release of prescription records shall be allowed only to the extent authorized by §32.1-127.1:03 of the Code of Virginia.

C. The proposed location or structural changes shall be inspected by an authorized agent of the board prior to issuance of a permit.

1. Pharmacy permit applications which indicate a requested inspection date, or requests which are received after the application is filed, shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

2. Requested inspection dates which do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

3. At the time of the inspection, the dispensing area shall comply with 18VAC110-20-150, 18VAC110-20-160,

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18VAC110-20-170, 18VAC110-20-180, and 18VAC110-20-190.

4. If an applicant substantially fails to meet the requirements for issuance of a permit and a reinspection is required, or if the applicant is not ready for the inspection on the established date and fails to notify the inspector or the board at least 24 hours prior to the inspection, the applicant shall pay a reinspection fee as specified in 18VAC110-20-20 prior to a reinspection being conducted.

D. Drugs shall not be stocked within the proposed pharmacy or moved to a new location until approval is granted by the inspector or board staff.

E. Once the permit is issued, prescription drugs may not be stocked earlier than two weeks prior to the designated opening date. Once prescription drugs have been placed in the pharmacy, a pharmacist shall be present on a daily basis to ensure the safety and integrity of the drugs. If there is a change in the designated opening date, the pharmacy shall notify the board office, and a pharmacist shall continue to be on site on a daily basis.

## **18VAC110-20-180. Security system.**

A. A device for the detection of breaking shall be installed in each prescription department of each pharmacy. The installation and the device shall be based on accepted burglar alarm industry standards, and shall be subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.
2. The device shall be monitored in accordance with accepted industry standards, maintained in operating order ~~and shall~~ have an auxiliary source of power, and be capable of sending an alarm signal to the monitoring entity when breached if the communication line is not operational.
3. The device shall fully protect the prescription department and shall be capable of detecting breaking by any means when activated.
4. Access to the alarm system for the prescription department area of the pharmacy shall be restricted to the pharmacists working at the pharmacy, except for access by other persons in accordance with 18VAC110-20-190 B 2, and the system shall be activated whenever the prescription department is closed for business.

### B. Exceptions to provisions in this section:

~~5. This regulation shall not apply to pharmacies which have been granted a permit~~ 1. Alarm systems approved prior to November 4, 1993, will be deemed to meet the requirements of subdivisions A 1, 2, and 3, provided that a previously approved security alarm system is in place, that

no structural changes are made in the prescription department, that no changes are made in the security system, that the prescription department is not closed while the rest of the business remains open, and ~~provided further~~ that a breaking and loss of drugs does not occur. If a breaking with a loss of drugs occurs, the pharmacy shall immediately upgrade the alarm to meet the current standards and shall file an application with the board in accordance with 18VAC110-20-140 A.

~~6. 2.~~ If the prescription department was located in a business with extended hours prior to November 4, 1993, and had met the special security requirements by having a floor to ceiling enclosure, a separately activated alarm system shall not be required.

~~7. 3.~~ This section shall not apply to pharmacies which are open and staffed by pharmacists 24 hours a day. If the pharmacy changes its hours or if it must be closed for any reason, the PIC or owner must immediately notify the board, file an application in accordance with 18VAC110-20-140 A, and have installed ~~within 72 hours prior to closing~~, a security system ~~which that~~ meets the requirements of subdivisions A 1 through 4 of this section.

## **18VAC110-20-190. Prescription department enclosures; access to prescription department.**

A. The prescription ~~departments~~ department of each pharmacy shall be provided with enclosures subject to the following conditions:

1. The enclosure shall be constructed in such a manner that it protects the ~~controlled drug stock~~ prescription drugs from unauthorized entry and from pilferage at all times whether or not a pharmacist is on duty.
2. The enclosure shall be ~~of sufficient height as to prevent a person from reaching over to gain access to the drugs~~ locked and alarmed at all times when a pharmacist is not on duty.
3. ~~Entrances to the enclosed area must have a door with no more than a six inch gap from the floor and which is at least as high as the adjacent structure. The requirement for a maximum six inch gap shall not apply to those pharmacies in existence prior to February 3, 1999, with the exception of any pharmacy which experiences a related diversion or theft. The enclosure shall be capable of being~~ locked in a secure manner at any time the pharmacist on duty is not present in the prescription department.
4. ~~Doors to the area must have locking devices which will prevent unauthorized entry in the absence of the pharmacist.~~

B. The ~~door~~ keys or other means of entry into a locked prescription department and the alarm access code to the dispensing areas shall be subject to the following requirements: 1. Only restricted to pharmacists practicing at

the pharmacy and authorized by the PIC ~~shall be in possession of any keys to or other means of opening the locking device on the door to such enclosure, or to the alarm access code, with the following exceptions:~~

~~2. 1. The PIC or a pharmacist on duty, for emergency access, may place a key or other means of opening the locking device unlocking the prescription department and the alarm access code in a sealed envelope or other container with the pharmacist's signature across the seal in a safe or vault or other secured place within the pharmacy or other secured place. This key or code means of emergency access shall only be used to allow entrance to the prescription department by other pharmacists, or by a pharmacy technician in accordance with subsection D of this section. In lieu of the pharmacist's signature across a seal, the executive director for the board may approve other methods of securing the emergency keys or access codes to the prescription department.~~

~~2. Pharmacy interns, pharmacy technicians, and other persons authorized by the PIC or pharmacist on duty may possess a key or other means of entry into a locked prescription department only when a pharmacist is on duty. Such key or other means of entry shall not allow entry when a pharmacist is not on duty.~~

C. The prescription department is restricted to pharmacists who are practicing at the pharmacy. ~~Interns~~ Pharmacy interns, pharmacy technicians, and other persons designated by the pharmacist on duty may be allowed access by the pharmacist but only during the hours when the pharmacist is on duty. Each pharmacist while on duty shall be responsible for the security of the pharmacy, including provisions for effective control against theft or diversion of prescription drugs and devices.

D. Upon a request by a patient to obtain an already-dispensed prescription, a pharmacy technician may enter the pharmacy for the sole purpose of retrieving filled prescriptions that have already been reviewed and certified for accuracy by a pharmacist and deemed ready for delivery to the patient if:

1. There is an unforeseen, unplanned absence of a pharmacist scheduled to work during regular prescription department hours;
2. Alternate pharmacist coverage cannot immediately be obtained;
3. The technician is accompanied by a member of the pharmacy's management or administration; and
4. All requirements of subsection E of this section are met.

E. Requirements for entry into the prescription department in the absence of a pharmacist.

1. The requirements for prescriptions awaiting delivery in subsection A of 18VAC110-20-200 are followed.

2. Prior to entry into the prescription department, the pharmacy technician shall obtain verbal permission from the PIC or another pharmacist regularly employed by that pharmacy to obtain and use the emergency key or other access and alarm access code and enter the pharmacy.

3. A record shall be made by the pharmacy technician of the entry to include the date and time of entry; the name and signature of the pharmacy technician; the name, title, and signature of the person accompanying the pharmacy technician; the pharmacist's name granting permission to enter and telephone number where the pharmacist was reached; the name of the patient initially requesting needed medication and the nature of the emergency; a listing of all prescriptions retrieved during that entry; and the time of exit and re-securing of the prescription department.

4. The pharmacy technician shall reseal the key and alarm access code after the pharmacy is re-secured, and the PIC shall have the alarm access code changed within 48 hours of such an entry and shall document that this has been accomplished on the record of entry.

5. All records related to entry by a pharmacy technician shall be maintained for a period of one year on premises.

**18VAC110-20-200. Storage of drugs, devices, and controlled paraphernalia; expired drugs.**

A. Prescriptions awaiting delivery. Prescriptions prepared for delivery to the patient may be placed in a ~~secure place~~ secured area outside of the prescription department and, not accessible to the public, where access to the prescriptions is restricted to individuals designated by the pharmacist to designated clerical assistants. With the permission of the pharmacist, the prepared prescriptions may be transferred to the patient at a time when the pharmacist is not on duty. If a prescription is delivered at a time when the pharmacist is not on duty, written procedures shall be established and followed by the pharmacy which detail security of the dispensed prescriptions and a method of compliance with counseling requirements of §54.1-3319 of the Code of Virginia. Additionally, a log shall be made and maintained of all prescriptions delivered to a patient when a pharmacist is not present to include the patient's name, prescription number(s), date of delivery, and the signature of the person receiving the prescription. Such log shall be maintained for a period of one year.

B. Dispersion of Schedule II drugs. Schedule II drugs shall either be dispersed with other schedules of drugs or shall be maintained within a securely locked cabinet, drawer, or safe. The cabinet, drawer, or safe may remain unlocked during hours that the prescription department is open and a pharmacist is on duty.

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C. Safeguards for controlled paraphernalia and Schedule VI medical devices. Controlled paraphernalia and Schedule VI medical devices shall not be placed in an area completely removed from the prescription department whereby patrons will have free access to such items or where the pharmacist cannot exercise reasonable supervision and control.

D. Expired, or otherwise adulterated or misbranded drugs; security. Any drug which has exceeded the expiration date, or is otherwise adulterated or misbranded, shall not be dispensed or sold; it shall be separated from the stock used for dispensing. Expired prescription drugs shall be maintained in a designated area within the prescription department until proper disposal.

## **18VAC110-20-210. Disposal of drugs by pharmacies.**

If a PIC wishes to dispose of unwanted drugs, he shall use one of the following procedures:

1. Transfer the drugs to another person or entity authorized to possess or provide for proper disposal of such drugs; or
2. Destroy the drugs by burning in an incinerator, or other board-approved method, in compliance with all applicable local, state, and federal laws and regulations. If Schedule II through V drugs are to be destroyed, the following procedures shall apply:
  - a. At least 14 days prior to the destruction date, the PIC shall provide a written notice to the board office; the notice shall state the following:
    - (1) Date, time, manner, and place of destruction.
    - (2) The names of the pharmacists who will witness the destruction process.
  - b. If the destruction date is to be changed or the destruction does not occur, a new notice shall be provided to the board office as set forth above in subdivision 2 of this section.
  - c. The actual destruction shall be witnessed by the PIC and another pharmacist not employed by the pharmacy.
  - d. The DEA drug destruction form shall be fully completed and used as the record of all drugs to be destroyed. A copy of the destruction form shall be retained at the pharmacy with other inventory records.

### Part VI Drug Inventory and Records

## **18VAC110-20-240. Manner of maintaining records, prescriptions, inventory records.**

A. Each pharmacy shall maintain the inventories and records of drugs as follows:

1. Inventories and records of all drugs listed in Schedules I and II shall be maintained separately from all other records of the pharmacy. Each pharmacy shall maintain a perpetual

inventory of all Schedule II drugs received and dispensed, with reconciliation at least every 30 days. Electronic monitoring at the pharmacy or by another entity that provides alerts for discrepancies between drugs received and drugs dispensed is acceptable provided such alerts are reviewed at least monthly.

2. Inventories and records of drugs listed in Schedules III, IV, and V may be maintained separately or with records of Schedule VI drugs but shall not be maintained with other records of the pharmacy.

3. All executed order forms, prescriptions, and inventories of Schedule II through V drugs shall be maintained at the same ~~location~~ address as the stock of drugs to which the records pertain. If authorized by DEA, other records pertaining to Schedule II through V drugs, such as invoices, may be maintained in an off-site database or in secured storage. All records in off-site storage shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

~~4. In the event that an inventory is taken as the result of a theft of drugs pursuant to §54.1-3404 of the Drug Control Act, the inventory shall be used as the opening inventory within the current biennial period. Such an inventory does not preclude the taking of the required inventory on the required biennial inventory date.~~

~~5.~~ 4. All inventories required by §54.1-3404 of the Code of Virginia shall be signed and dated by the person taking the inventory and shall indicate whether the inventory was taken prior to the opening of business or after close of business. A 24-hour pharmacy with no opening or closing of business shall clearly document whether the receipt or distribution of drugs on the inventory date occurred before or after the inventory was taken.

5. Invoices or other records showing receipts of Schedule VI drugs shall be maintained, but may be stored in an electronic database or record as an electronic image that provides an exact, clearly legible, image of the document or in secured storage either on or off site. All records in off-site storage or database shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

6. All records required by this section shall be filed chronologically and maintained for a period of not less than two years from the date of transaction.

## B. Prescriptions.

1. A hard copy prescription shall be placed on file for every initial prescription dispensed and be maintained for two years from the date of last refill. All prescriptions shall be filed chronologically by date of initial dispensing.

2. Schedule II drugs. Prescriptions for Schedule II drugs shall be maintained in a separate prescription file.

## Part VII

## Prescription Order and Dispensing Standards

3. Schedule III through V drugs. Prescriptions for Schedule III through V drugs shall be maintained either in a separate prescription file for drugs listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescriptions of the pharmacy. Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than one inch high and filed in the prescription file for drugs listed in the usual consecutively numbered prescription file for Schedule VI drugs. However, if a pharmacy employs an automated data processing system or other electronic recordkeeping system for prescriptions which permits identification by prescriber's name, patient's name, drug dispensed, and date filled, then the requirement to mark the hard copy prescription with a red "C" is waived.

## C. Chart orders.

1. A chart order written for a patient in a hospital or long-term care facility, a patient receiving home infusion services, or a hospice patient pursuant to §54.1-3408.01 A of the Code of Virginia shall be exempt from having to contain all required information of a written prescription provided:

- a. This information is contained in other readily retrievable records of the pharmacy; and
- b. The pharmacy maintains a current policy and procedure manual that sets out where this information is maintained and how to retrieve it and the minimum requirements for chart orders consistent with state and federal law and accepted standard of care.

2. A chart order may serve as the hard copy prescription for those patients listed in subdivision 1 of this subsection.

## 3. Requirements for filing of chart orders.

a. Chart orders shall be filed chronologically by date of initial dispensing with the following exception: If dispensing data can be produced showing a complete audit trail for any requested drug for a specified time period and each chart order is readily retrievable upon request, chart orders may be filed using another method. Such alternate method shall be clearly documented in a current policy and procedure manual.

b. If a single chart order contains both an order for a Schedule II drug and one or more orders for a drug in another schedule, where the Schedule II drug is not floor stocked, but is dispensed from the pharmacy pursuant to this order for the specific patient, the original order must be filed with records of dispensing of Schedule II drugs and a copy of the order placed in the file for other schedules.

**18VAC110-20-270. Dispensing of prescriptions; certification of completed prescriptions; supervision of pharmacy technicians.**

A. In addition to the acts restricted to a pharmacist in §54.1-3320 A of the Code of Virginia, a pharmacist shall provide personal supervision of compounding of extemporaneous preparations by pharmacy technicians.

~~B. A pharmacist directly monitoring the activities of a person enrolled in an approved pharmacy technician training program who is performing the tasks restricted to a pharmacy technician prior to registration in accordance with §54.1-3321 D of the Code of Virginia shall not monitor more than two such trainees at the same time, and at no time shall a pharmacist supervise more than four persons performing technician functions to include technicians and trainees. A pharmacist shall determine the number of pharmacy interns, pharmacy technicians, and pharmacy technician trainees he can safely and competently supervise at one time.~~

C. After the prescription has been prepared and prior to the delivery of the order, the pharmacist shall inspect the prescription product to verify its accuracy in all respects, and place his initials on the record of dispensing as a certification of the accuracy of, and the responsibility for, the entire transaction. Such record showing verification of accuracy shall be maintained on a pharmacy record for the required time period of two years, unless otherwise specified in regulation.

D. If a pharmacist declines to fill a prescription for any reason other than the unavailability of the drug prescribed, he shall record on the back of the prescription the word "declined"; the name, address, and telephone number of the pharmacy; the date filling of the prescription was declined; and the signature of the pharmacist.

E. If a pharmacist determines from a prescriber or other means that a prescription presented for dispensing is a forgery, the pharmacist shall not return the forged prescription to the person presenting it. The forged prescription may be given to a law-enforcement official investigating the forgery; or it shall be retained for a minimum of 30 days before destroying it, in the event it is needed for an investigative or other legitimate purpose.

**18VAC110-20-275. Delivery of dispensed prescriptions.**

A. Pursuant to §54.1-3420.2 B of the Code of Virginia, in addition to direct hand delivery to a patient or patient's agent or delivery to a patient's residence, a pharmacy may deliver prescriptions to another pharmacy, to a practitioner of the healing arts licensed to practice pharmacy or to sell controlled substances, or to an authorized person or entity holding a controlled substances registration issued for this purpose in

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compliance with this section and any other applicable state or federal law.

## B. Delivery to another pharmacy.

1. One pharmacy may fill prescriptions and deliver the prescriptions to a second pharmacy for patient pickup or direct delivery to the patient provided the two pharmacies have the same owner, or have a written contract or agreement specifying the services to be provided by each pharmacy, the responsibilities of each pharmacy, and the manner in which each pharmacy will comply with all applicable federal and state law.

2. Each pharmacy using such a drug delivery system shall maintain and comply with all procedures in a current policy and procedure manual that includes the following information:

- a. A description of how each pharmacy will comply with all applicable federal and state law;
- b. The procedure for maintaining required, retrievable dispensing records to include which pharmacy maintains the hard-copy prescription, which pharmacy maintains the active prescription record for refilling purposes, how each pharmacy will access prescription information necessary to carry out its assigned responsibilities, method of recordkeeping for identifying the pharmacist or pharmacists responsible for dispensing the prescription and counseling the patient, and how and where this information can be accessed upon request by the board;
- c. The procedure for tracking the prescription during each stage of the filling, dispensing, and delivery process;
- d. The procedure for identifying on the prescription label all pharmacies involved in filling and dispensing the prescription;
- e. The policy and procedure for providing adequate security to protect the confidentiality and integrity of patient information;
- f. The policy and procedure for ensuring accuracy and accountability in the delivery process;
- g. The procedure and recordkeeping for returning to the initiating pharmacy any prescriptions that are not delivered to the patient; and
- h. The procedure for informing the patient and obtaining consent ~~if required by law~~ for using such a dispensing and delivery process.

3. Drugs waiting to be picked up at or delivered from the second pharmacy shall be stored in accordance with subsection A of 18VAC110-20-200.

C. Delivery to a practitioner of the healing arts licensed by the board to practice pharmacy or to sell controlled

substances or other authorized person or entity holding a controlled substances registration authorized for this purpose.

1. A prescription may be delivered by a pharmacy to the office of such a practitioner or other authorized person provided there is a written contract or agreement between the two parties describing the procedures for such a delivery system and the responsibilities of each party.

2. Each pharmacy using this delivery system shall maintain a policy and procedure manual that includes the following information:

- a. Procedure for tracking and assuring security, accountability, integrity, and accuracy of delivery for the dispensed prescription from the time it leaves the pharmacy until it is handed to the patient or agent of the patient;
- b. Procedure for providing counseling;
- c. Procedure and recordkeeping for return of any prescription medications not delivered to the patient;
- d. The procedure for assuring confidentiality of patient information; and
- e. The procedure for informing the patient and obtaining consent ~~if required by law~~ for using such a delivery process.

3. Prescriptions waiting to be picked up by a patient at the alternate site shall be stored in a lockable room or lockable cabinet, cart, or other device that cannot be easily moved and that shall be locked at all times when not in use. Access shall be restricted to the licensed practitioner of the healing arts or the responsible party listed on the application for the controlled substances registration, or either person's designee.

D. The contracts or agreements and the policy and procedure manuals required by this section for alternate delivery shall be maintained both at the originating pharmacy as well as the alternate delivery site.

E. A controlled substances registration as an alternate delivery site shall only be issued to an entity without a prescriber or pharmacist present at all times the site is open if there is a valid patient health or safety reason not to deliver dispensed prescriptions directly to the patient and if compliance with all requirements for security, policies, and procedures can be reasonably assured.

## **18VAC110-20-280. Transmission of a prescription order by facsimile machine.**

A. Prescription orders for Schedule III through VI drugs may be transmitted to pharmacies by facsimile device (FAX) upon the following conditions:

1. The prescription shall be faxed only to the pharmacy of the patient's choice.

2. A valid faxed prescription shall contain all required information for a prescription. A written prescription shall include the prescriber's signature.

3. An authorized agent, as defined in §54.1-3408.01 D of the Code of Virginia, may transmit an oral prescription by facsimile and shall record on the faxed prescription the agent's full name and wording that clearly indicates that the prescription being transmitted is an oral prescription.

4. A faxed prescription shall be valid only if faxed from the prescriber's practice location, except in the following situations:

~~for forwarding~~ a. Forwarding a faxed chart order from a long-term care facility or from a hospice, including a home hospice;

b. Faxing an oral prescription by authorized agent under the conditions set forth in subdivision 2 of this subsection; or

c. Forwarding a written prescription by an authorized agent from a long-term care facility, provided the provider pharmacy maintains written procedures for such transactions, and provided the original prescription is obtained by the provider pharmacy within seven days of dispensing. The original prescription shall be attached to the faxed copy.

5. The following additional information shall be recorded on the faxed prescription:

- a. The date that the prescription was faxed;
- b. The printed name, address, phone number, and fax number of the authorized prescriber; and
- c. The institution, if applicable, from which the prescription was faxed, including address, phone number and fax number.

B. Prescription orders for Schedule II drugs may only be faxed for information purposes and may not serve as the original written prescription authorizing dispensing, except for orders to be administered to ~~nursing home~~ long-term care facility and home infusion patients in accordance with §54.1-3408.01 ~~C~~ B of the Code of Virginia and except for prescriptions written for a Schedule II narcotic substance for patients residing in a hospice certified by Medicare under Title XVIII or licensed by the state, which may include home hospice. The prescriber shall note on the prescription if the patient is a hospice patient, and the prescription shall meet all requirements for a written prescription, including the prescriber's signature.

C. If the faxed prescription is of such quality that the print will fade and not remain legible for the required retention period, the receiving pharmacist shall copy or transcribe the faxed prescription on paper of permanent quality.

D. Authorizations for refills may be faxed by the prescriber to the pharmacy provided the authorization includes patient name, address, drug name and strength, quantity, directions for use, prescriber's name, prescriber's signature or agent's name, and date of authorization.

**18VAC110-20-286. Chart orders for outpatients.**

A chart order may be filled by an outpatient (community/retail) pharmacy for outpatient use provided the following conditions are met:

- 1. The chart order was written for a patient while in a hospital or long-term care facility.
- 2. The pharmacist has all information necessary to constitute a valid outpatient prescription.
- 3. The pharmacist in an outpatient setting has direction, either written or obtained verbally, that the chart order is actually intended to be outpatient or discharge prescription orders, and not merely a listing drugs the patient was taking while an inpatient.
- 4. The orders include some direction related to quantity to be dispensed or authorized duration of the order by which the pharmacist can calculate the authorized quantity using directions for use and duration.

**18VAC110-20-320. Refilling of Schedule III through VI prescriptions.**

A. A prescription for a drug listed in Schedule III, IV, or V shall not be dispensed or refilled more than six months after the date on which such prescription was issued, and no such prescription authorized to be filled may be refilled more than five times.

- 1. Each refilling of a prescription shall be entered on the back of the prescription or on another record in accordance with §54.1-3412 and 18VAC110-20-255, initialed and dated by the pharmacist as of the date of dispensing. If the pharmacist merely initials and dates the prescription, it shall be presumed that the entire quantity ordered was dispensed.
- 2. The partial dispensing of a prescription for a drug listed in Schedule III, IV, or V is permissible, provided that:
  - a. Each partial dispensing is recorded in the same manner as a refilling;
  - b. The total quantity of drug dispensed in all partial dispensing does not exceed the total quantity prescribed; and
  - c. No dispensing occurs after six months after the date on which the prescription order was issued.

B. A prescription for a drug listed in Schedule VI shall be refilled only as expressly authorized by the practitioner. If no such authorization is given, the prescription shall not be

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refilled, except as provided in §54.1-3410 C or subdivision 4 of §54.1-3411 of the Code of Virginia.

A prescription for a Schedule VI drug or device shall not be dispensed or refilled more than one year after the date on which it was issued unless the prescriber specifically authorizes dispensing or refilling for a longer period of time not to exceed two years.

C. As an alternative to all manual recordkeeping requirements provided for in subsections A and B of this section, an automated data processing system as provided in 18VAC110-20-250 may be used for the storage and retrieval of all or part of dispensing information for prescription drugs dispensed.

~~D. Authorized refills of all prescription drugs may only be dispensed in~~ The timing of dispensing an authorized refill of a prescription shall be within reasonable conformity with the directions for use as indicated by the practitioner; if directions have not been provided, then any authorized refills may only be dispensed in reasonable conformity with the recommended dosage and with the exercise of sound professional judgment. An authorized refill may be dispensed early provided the pharmacist documents a valid reason for the necessity of the early refill.

## **18VAC110-20-340. Packaging standards for dispensed prescriptions.**

A. A drug shall be dispensed only in packaging approved by the current U.S.P.-N.F. for that drug. In the absence of such packaging standard for that drug, it shall be dispensed in a well-closed container.

B. Drugs may be dispensed in compliance packaging for self-administration when requested by the patient or for use in hospitals or long-term care facilities provided that such packaging meets all current U.S.P.-N.F. standards for packaging, labeling and record keeping. Compliance packaging that is comprised of a series of individual containers or pockets labeled with the specific date and time when the contents of that container are to be taken, and which may contain more than one different drug, shall comply with USP-NF standards for customized patient medication packages to include:

1. If the packaging allows for the separation of the individual containers, the labels for each individual container shall be labeled with the identity of each of the drug products contained within; and

2. The main packaging label shall contain all the required elements for any outpatient prescription label and shall contain a physical description identifying each solid dosage form contained within the individual containers.

## **18VAC110-20-350. Special packaging.**

A. Each drug dispensed to a person in a household shall be dispensed in special packaging except when otherwise directed in a prescription by a practitioner, when otherwise requested by the purchaser, or when such drug is exempted from 16 CFR §1702.1 et seq. promulgated pursuant to the Poison Prevention Packaging Act of 1970 (15 USC §§1471-1476).

~~B. Each pharmacy may have a sign posted near the prescription department advising the patients that nonspecial packaging may be requested.~~

~~C. B. If nonspecial packaging is requested, a release of such request shall be obtained from the patient or the patient's authorized agent and maintained for two years from the date of dispensing a notation shall be made on the dispensing record or other retrievable record.~~

## **18VAC110-20-355. Pharmacy repackaging of drug; records required; labeling requirements.**

A. Pharmacies in which bulk reconstitution of injectable, bulk compounding or the repackaging or prepackaging of drugs is performed shall maintain adequate control records for a period of one year or until the expiration, whichever is greater. The records shall show the name of the drug(s) used; strength, if any; date repackaged; quantity prepared; initials of the pharmacist verifying the process; the assigned lot or control number; the manufacturer's or distributor's name and lot or control number; and an expiration date.

B. The drug name; strength, if any; the assigned lot or control number or the manufacturer's or distributor's name and lot or control number; and an appropriate expiration date determined by the pharmacist in accordance with USP guidelines shall appear on any subsequently repackaged or reconstituted units.

C. Pharmacies using automated counting devices or dispensers in which drugs are removed from manufacturer's original packaging and placed in bulk bins shall comply with the following requirements:

1. A bin filling record shall be maintained, manually or in a computerized record for a period of one year from date of filling from which information can be readily retrieved, for each bin including:

- a. The drug name and strength, if any;
- b. The name of the manufacturer or distributor;
- c. Manufacturer's control or lot number(s) and expiration date for all lots placed into the bin at the time of filling;
- d. Any assigned lot number; ~~and~~
- e. An expiration date determined according to USP guidelines for repackaging;

f. The date of filling; and

g. The pharmacist's initials verifying the accuracy of the process.

2. If more than one lot is added to a bin at the same time, the lot which expires first shall be used to determine the expiration date if shorter than a calculated date based on USP guidelines.

3. Each bin shall be labeled in such a manner as to cross-reference the information on the filling record with the correct expiration date.

4. If only one lot is added to a bin at one time, but a ~~second~~ subsequent lot may be added before the first has cleared, the automated device shall be constructed to reasonably dispense the first lot before the second lot is dispensed, the expiration date on the bin's label shall reflect the expiration date assigned to the earlier lot, and the bin shall be allowed to "run dry" where all product is completely removed prior to filling at least once every 60 days with a record made of the run dry dates.

D. A pharmacy may return a dispensed drug to stock for redispensing that has never left the pharmacy premises or the control of the pharmacy delivery agent pursuant to §54.1-3411.1 A 3 of the Code of Virginia under the following conditions:

1. An expiration date shall be placed on the label prior to returning the drug to stock. In the absence of stability data to the contrary, the date on the label may not exceed the expiration date on the manufacturer's container or one year from the date the drug was originally dispensed and placed in the prescription vial, whichever date is earlier.

2. The restocked drug shall be used to fill the next prescription received for that product. In the event that the drug is not dispensed prior to the new assigned expiration date, it shall be removed from working stock as expired, and disposed of in accordance with 18VAC110-20-210.

3. If there is no lot number on the label of a drug returned to stock or on the prescription records that can be cross-referenced from the prescription label, the drug shall be removed from stock upon any recall of that drug product and returned to the manufacturer or otherwise disposed of in accordance with 18VAC110-20-210.

#### **18VAC110-20-391. Prescription blanks.**

If a pharmacy provides prescription blanks to prescribers, no advertising or other information shall be on the face of the prescription blank other than prompts for essential information required by law to be on a written prescription. Any nonessential information such as coupons or pharmacy name may be placed on the back of the prescription blank or on a separate sheet of paper, but shall not be on or attached to the face of the blank.

#### **18VAC110-20-395. Purchase of drugs.**

Except for an emergency purchase from another pharmacy, a pharmacist may only purchase Schedule II through VI drugs from a wholesale distributor or warehouse licensed or registered by the board.

#### **18VAC110-20-410. Permitted physician licensed by the board.**

A. Pursuant to §54.1-3304 of the Code of Virginia, physicians licensed by the board to dispense drugs, when pharmacy services are not reasonably available, shall be subject to the following sections of this chapter. For purposes of this section, the terms "pharmacist," "pharmacist-in-charge," "pharmacy," and "PIC" in the following shall be deemed to mean the physician permitted by the board:

1. 18VAC110-20-110 C and D;
2. 18VAC110-20-130 A;
3. 18VAC110-20-140 A and C;
4. 18VAC110-20-150 except that these requirements shall not apply to physicians licensed prior to August 25, 2004, unless the dispensing area is relocated or remodeled;
5. 18VAC110-20-160;
6. 18VAC110-20-180;
7. 18VAC110-20-190 A, B and C;
8. 18VAC110-20-200;
9. 18VAC110-20-210; and
10. 18VAC110-20-240 through 18VAC110-20-410.

B. A physician may apply for a special or limited use permit in accordance with 18VAC110-20-120.

#### **18VAC110-20-425. ~~Robotic Pharmacy Systems~~ pharmacy systems.**

~~A~~ A pharmacy providing services to a hospital or a long-term care facility using a unit dose dispensing system may ~~apply for approval of operate~~ operate a robotic pharmacy system ~~and a waiver of 18VAC110-20-270 B~~ dispensing unit dose, bar-coded drugs, and is exempted from 18VAC110-20-270 C, provided the accuracy of the final dispensed prescription product ~~is determined by~~ complies with a written quality assurance plan ~~and requirements of this chapter. An applicant shall apply using a form provided by the board and shall pay a fee as set forth in 18VAC110-20-20. The following requirements for operation of a robotic pharmacy system shall apply:~~

1. Pharmacists shall review for accuracy and appropriateness of therapy all data entry of prescription orders into the computer operating the system.

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2. The packaging, repackaging, stocking and restocking of the robotic pharmacy system shall be performed by pharmacy technicians or pharmacists.

3. Pharmacists shall verify and check for the accuracy of all drugs packaged or repackaged for use by the robot by a visual check of both labeling and contents prior to stocking the drugs in the robotic pharmacy system. A repackaging record shall be maintained in accordance with 18VAC110-20-355 A, and the verifying pharmacist shall initial the record. Packaging and labeling, including the appropriate beyond-use date, shall conform to requirements of this chapter and current USP-NF standards.

4. A written policy and procedure must be maintained and shall include at a minimum, procedures for ensuring:

a. Accurate packaging and repackaging of all drugs for use in the robotic pharmacy system, to include properly labeled barcodes, and method for ensuring pharmacist verification of all packaged and repacked drugs compliant with this chapter;

b. Accurate stocking and restocking of the robotic pharmacy system;

c. Removing expired drugs;

d. Proper handling of drugs that may be dropped by the robotic pharmacy system;

e. Performing routine maintenance of robotic pharmacy system as indicated by manufacturer's schedules and recommendations;

f. Accurate dispensing of drugs via robotic pharmacy system for cart fills, first doses, and cart fill updates during normal operation and during any scheduled or unscheduled downtime;

g. Appropriately investigating, identifying and correcting sources of discrepancies or errors associated with the robotic pharmacy system; and

h. Maintaining quality assurance reports.

5. Pharmacists shall perform a daily random check of medications picked by the robot for 5.0% of all patients' bins and 5.0% of all first doses or cart updates. Documentation of this check shall include the pharmacist's initials for each medication checked and a description of all discrepancies found.

6. All manual picks shall be checked by pharmacists.

7. If the robot picks an incorrect medication, the pharmacy shall immediately institute a 100% check of all patients' bins or doses and shall immediately report the error to the board. The 100% check procedure shall continue until such time as the pharmacy provides documentation to the board showing that the cause of the error has been determined and addressed and that the robot is no longer making

errors, and the board allows the pharmacy to return to a reduction in checking.

8. Quarterly quality assurance reports demonstrating the accuracy of the robot shall be maintained. At a minimum, these reports shall include:

a. A summary indicating the date and description of all discrepancies that include but are not limited to discrepancies involving the packaging, repackaging and dispensing of drugs via the robotic pharmacy system found during that quarter plus a cumulative summary since initiation of the robotic pharmacy system.

b. The total number of doses packaged for the robotic pharmacy system and total number of doses picked by the robot during the quarter.

c. The total number of doses picked by the robot that were checked in conducting the 5.0% patient bin check, 5.0% cart updates check, and 5.0% first dose check.

d. Dates and time associated with any scheduled or unanticipated downtime with an explanation of the problem to include the time span of the downtime and the resolution.

9. All unanticipated downtime shall be immediately reported to the board.

10. All records required by this section shall be maintained at the address of the pharmacy for a minimum of two years. Records may be maintained in offsite storage or as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

B. A copy of the quality assurance plan shall be submitted as a part of the application and shall include at a minimum the following:

1. Method of ensuring accurate packaging and loading of the robotic pharmacy system.

2. Procedures for conducting quality control checks of final dispensing for accuracy.

3. Manufacturer's schedules and recommendations for maintenance of the device.

4. Plan for maintenance of all related documentation for a minimum of two years.

C. The application shall be reviewed by an informal conference committee of the board, consisting of no less than two members of the board.

1. The informal conference committee may approve or deny the application, or may approve the application upon terms and conditions.

~~2. The committee may require an inspection of a new or modified robotic pharmacy system prior to approval.~~

~~3. The committee may require that periodic reports be submitted detailing frequency and types of errors determined by the continuous quality assurance checks.~~

~~4. The board may withdraw the approval of a waiver for failure to comply with the quality assurance plan or with other terms and conditions which have been established by the board.~~

~~D. The board shall be notified prior to implementing any modification to the approved application and no modification may be implemented until approved by the board.~~

~~E. If a robotic pharmacy system is used, a pharmacist shall review all data entry of prescription orders into the computer operating the system for accuracy and appropriateness of therapy and shall check all repackaged medication prior to use in loading the system.~~

Part XI

Pharmacy Services to Hospitals

**18VAC110-20-440. Responsibilities of the pharmacist-in-charge.**

A. The PIC in a pharmacy located within a hospital or the PIC of any outside pharmacy providing pharmacy services to a hospital shall be responsible for establishing procedures for and assuring maintenance of the proper storage, security, and dispensing of all drugs used throughout the hospital.

B. The PIC of a pharmacy serving a hospital shall be responsible for maintaining a policy and procedure for providing reviews of drug therapy to include at a minimum any irregularities in drug therapy, ~~drug interactions, drug administration, or transcription errors.~~ All significant irregularities shall be brought to the attention of the attending practitioner or other person having authority to correct the potential problem consistent with §54.1-3319 A of the Code of Virginia.

C. Prior to the opening of a satellite pharmacy within the hospital, the PIC shall notify the board as required by 18VAC110-20-140 and shall ensure compliance with subsections B through G of 18VAC110-20-150, 18VAC110-20-160, 18VAC110-20-170, 18VAC110-20-180 and 18VAC110-20-190. No drugs shall be stocked in a satellite pharmacy until an inspection has been completed and approval given for opening.

D. For the following list of Schedule VI controlled substances, the PIC of a pharmacy serving a hospital may authorize the storage in an area of the hospital outside the pharmacy, and may delegate the ordering and distribution within the hospital to nonpharmacy personnel provided the conditions for proper storage and adequate security and the procedures for distribution are set forth in the pharmacy's

policy and procedure manual, and provided that the PIC assures that these storage areas are checked monthly for compliance. The storage areas must be locked when authorized staff is not present in the area. Except for nitrous oxide, medical gases may be stored in an unlocked area.

1. Large volume parenteral solutions that contain no active therapeutic drugs other than electrolytes;
2. Irrigation solutions;
3. Contrast media;
4. Medical gases;
5. Sterile sealed surgical trays that may include a Schedule VI drug; and
6. Blood components and derivatives, and synthetic blood components and products that are classified as prescription drugs.

**18VAC110-20-450. After-hours access to the pharmacy.**

A. When authorized by the PIC, an authorized nurse may have access to the pharmacy in the absence of the pharmacist a supply of drugs maintained by the pharmacy at a location outside the pharmacy in order to obtain emergency medication during hours the pharmacy is closed, provided that such drug is available in the manufacturer's original package or in units which have been prepared and labeled by a pharmacist and provided further that a separate record shall be made and left within the pharmacy at the location of the stock of drugs on a form prescribed by the PIC and such records are maintained within the pharmacy for a period of one year showing:

- 1 The date of withdrawal;
2. The patient's name;
3. The name of the drug, strength, dosage form and dose prescribed;
4. Number of doses removed; and
5. The signature of the authorized nurse.

B. If the after-hours supply of drugs is in an area that is continuously open and staffed, such as a patient floor or emergency room, then the area does not need to be alarmed. If the after-hours supply is maintained in an area of the hospital that is not open and continuously staffed, such as a floor that primarily houses departments that are closed daily, then an alarm that meets the requirements of 18VAC110-20-180 shall be installed and activated at all times.

**18VAC110-20-460. Floor stock drugs; proof of delivery; distribution records.**

A. A pharmacist shall check all Schedule II-VI drugs delivered to a hospital unit as floor-stock before the drugs leave the pharmacy and shall initial or sign manually or

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electronically the record of distribution verifying the accuracy of the distribution.

~~B.~~ A delivery receipt shall be obtained for Schedule II through V drugs supplied as floor stock. This record shall include the date, drug name and strength, quantity, hospital unit receiving drug and the manual or electronic signatures of the dispensing pharmacist and the receiving nurse. ~~Receipts shall be maintained in the pharmacy for a period of two years or in off site storage which shall be retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.~~

~~B. C.~~ A record of disposition/administration shall be used to document administration of Schedule II through V drugs when a floor stock system is used for such drugs. The record shall be returned to the pharmacy within three months of its issue. The PIC or his designee shall:

1. Match returned records with delivery receipts to verify that all records are returned;
2. Periodically audit returned administration records for completeness as to patient's names, dose, date and time of administration, signature or initials of person administering the drug, and date the record is returned;
3. Verify that all additions to inventory are recorded, that all additions to and deductions from inventory are correctly calculated, that sums carried from one record to the next are correctly recorded, and periodically verify that doses documented on administration records are reflected in the medical record; and
4. Initial the returned record, ~~file chronologically by date of issue, and retain for two years from the date of return or in off site storage which shall be retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.~~

~~C. D.~~ All records required by this section shall be filed chronologically by date of issue, and retained for two years from the date of return at the address of the pharmacy. Schedule VI records may be maintained in offsite storage or as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent. Schedule II-V records may only be stored offsite or electronically as described in this subsection if authorized by DEA or in federal law or regulation. The filing requirements of 18VAC110-20-240 A 1 for separation of Schedule II records shall be met for administration records if the Schedule II drugs are listed in a separate section on a page that contains other schedules of drugs.

## **18VAC110-20-490. Automated devices for dispensing and administration of drugs.**

A hospital may use automated devices for the dispensing and administration of drugs pursuant to §54.1-3301 of the Code of Virginia and §§54.3401 and 54.1-3434.02 of the Drug Control Act and in accordance with 18VAC110-20-270, 18VAC110-20-420 or 18VAC110-20-460 as applicable. The following conditions shall apply:

1. Prior to removal of drugs from the pharmacy, a delivery record shall be generated for all drugs to be placed in an automated dispensing device which shall include the date; drug name, dosage form, and strength; quantity; hospital unit and a unique identifier for the specific device receiving the drug; initials of the person loading the automated dispensing device; and initials of the pharmacist ~~reviewing the transaction~~ checking the drugs to be removed from the pharmacy and the delivery record for accuracy.

2. At the time of loading, the delivery record for all Schedule II through V drugs shall be signed by a nurse or other person authorized to administer drugs from that specific device, and the record returned to the pharmacy ~~and maintained in chronological order for a period of two years from date of delivery. The delivery record and required signatures may be generated or maintained electronically provided the system being used has the capability of recording an electronic signature which is a unique identifier and restricted to the individual receiving the drugs and provided that this record is maintained in a "read only" format which cannot be altered after the information is recorded. The electronic record shall be readily retrievable, maintained for a period of two years, and the system used shall be capable of producing a hard-copy printout of the record upon request.~~

3. At the time of loading any Schedule II through V drug, the person loading will verify that the count of that drug in the automated dispensing device is correct. Any discrepancy noted shall be recorded on the delivery record and immediately reported to the pharmacist in charge, who shall be responsible for reconciliation of the discrepancy or properly reporting of a loss.

4. Automated dispensing devices in hospitals shall be capable of producing a hard-copy record of distribution which shall show patient name, drug name and strength, dose withdrawn, dose to be administered, date and time of withdrawal from the device, and identity of person withdrawing the drug.

5. The PIC or his designee shall conduct at least a monthly audit to review distribution and administration of Schedule II through V drugs from each automated dispensing device as follows:

- a. The audit shall reconcile records of all quantities of Schedule II through V drugs dispensed from the pharmacy with records of all quantities loaded into each device to detect whether any drugs recorded as removed from the pharmacy were diverted rather than being placed in the proper device.
- b. A discrepancy report shall be generated for each discrepancy in the count of a drug on hand in the device. Each such report shall be resolved by the PIC or his designee within 72 hours of the time the discrepancy was discovered or, if determined to be a theft or an unusual loss of drugs, shall be immediately reported to the board in accordance with §54.1-3404 E of the Drug Control Act.
- c. The audit shall include a review of a sample of administration records from each device per month for possible diversion by fraudulent charting. ~~A sample from each device shall not be less than 24 consecutive hours within the month being audited~~ shall include all Schedule II-V drugs administered for a time period of not less than 24 consecutive hours during the audit period.
- d. The audit shall include a check of medical records to ensure that a valid order exists for a random sample of doses recorded as administered.
- e. The audit shall also check for compliance with written procedures for security and use of the automated dispensing devices, accuracy of distribution from the device, and proper recordkeeping.
- f. The hard-copy distribution and administration records printed out and reviewed in the audit shall be initialed and dated by the person conducting the audit ~~and maintained in the pharmacy for a period of two years.~~ If nonpharmacist personnel conduct the audit, a pharmacist shall review the record and shall initial and date the record. ~~These distribution records reviewed in conducting the audit may be maintained electronically provided they can be readily retrieved upon request; provided they are maintained in a read-only format which does not allow alteration of the records; and provided a log is maintained for a period of two years showing dates of audit and review, the identity of the automated dispensing device being audited, the time period covered by the audit and review, and the initials of all reviewers.~~
6. If an automated dispensing device is used to obtain drugs for dispensing from an emergency room, a separate dispensing record is not required provided the automated record distinguishes dispensing from administration and records the identity of the physician who is dispensing.
7. Automated dispensing devices shall be inspected monthly by pharmacy personnel to verify proper storage, proper location of drugs within the device, expiration dates, the security of drugs and validity of access codes.
8. Personnel allowed access to an automated dispensing device shall have a specific access code which records the identity of the person accessing the device.
9. Proper use of the automated dispensing devices and means of compliance with requirements shall be set forth in the pharmacy's policy and procedure manual.
10. All records required by this section shall be filed in chronological order from date of issue and maintained for a period of not less than two years. Records shall be maintained at the address of the pharmacy providing services to the hospital except:
- a. Manual Schedule VI distribution records may be maintained in offsite storage or electronically as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic records are retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.
- b. Distribution and delivery records and required signatures may be generated or maintained electronically provided:
- (1) The system being used has the capability of recording an electronic signature that is a unique identifier and restricted to the individual required to initial or sign the record.
- (2) The records are maintained in a read-only format that cannot be altered after the information is recorded.
- (3) The system used is capable of producing a hard-copy printout of the records upon request.
- c. Schedule II-V distribution and delivery records may only be stored offsite or electronically as described in subdivisions 10 a and b of this section if authorized by DEA or in federal law or regulation.
- d. Hard-copy distribution and administration records that are printed and reviewed in conducting required audits may be maintained at an off-site location or electronically provided they can be readily retrieved upon request; provided they are maintained in a read-only format that does not allow alteration of the records; and provided a separate log is maintained for a period of two years showing dates of audit and review, the identity of the automated dispensing device being audited, the time period covered by the audit and review, and the initials of all reviewers.

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## **18VAC110-20-500. Licensed emergency medical services agencies program.**

The pharmacy may prepare a drug kit for a licensed emergency medical services agency provided:

1. The PIC of the hospital pharmacy shall be responsible for all ~~controlled~~ prescription drugs contained in this drug kit. A pharmacist shall check each drug kit after filling the kit, and initial the filling record certifying the accuracy and integrity of the contents of the kit.
2. The drug kit is sealed in such a manner that it will ~~preclude any possibility of~~ deter theft or loss of drugs and aid in detection of such.
3. Drugs may be administered by an emergency medical technician upon an oral order or written standing order of an authorized medical practitioner in accordance with §54.1-3408 of the Code of Virginia. Oral orders shall be reduced to writing by the technician and shall be signed by a medical practitioner. Written standing orders shall be signed by the operational medical director for the emergency medical services agency. The emergency medical technician shall make a record of all drugs administered to a patient. This administration record shall be signed by the medical practitioner who assumes responsibility for the patient at the hospital. If the patient is not transported to the hospital or if the attending medical practitioner at the hospital refuses to sign the record, a copy of this record shall be signed and placed in delivery to the hospital pharmacy who was responsible for that kit exchange by the agency's operational medical director within seven days of the administration.
4. When the drug kit has been opened, the kit shall be returned to the pharmacy and exchanged for an unopened kit. The record of the drugs administered shall accompany the opened kit when exchanged. An accurate record shall be maintained by the pharmacy on the exchange of the drug kit for a period of one year.
5. The record of the drugs administered shall be maintained as a part of the pharmacy records pursuant to state and federal regulations for a period of not less than two years.
6. Intravenous solutions provided by a hospital pharmacy to an emergency medical services agency may be stored separately outside the drug kit.

## **18VAC110-20-520. Drugs in long-term care facilities.**

~~Drugs~~ Prescription drugs, as defined in the Drug Control Act, shall not be floor stocked by a long-term care facility, except those in the stat drug box or emergency drug box or as provided for in 18VAC110-20-560 within this chapter.

## Part XII

### Pharmacy Services to Long-Term Care Facilities

## **18VAC110-20-530. Pharmacy's responsibilities to long-term care facilities.**

The pharmacy serving a long-term care facility shall:

1. Receive a valid order prior to the dispensing of any drug.
2. Ensure that personnel administering the drugs are trained in using the dispensing system provided by the pharmacy.
3. Ensure that the drugs for each patient are kept and stored in the originally received containers and that the medication of one patient shall not be transferred to another patient.
4. Ensure that each cabinet, cart or other area utilized for the storage of drugs is locked and accessible only to authorized personnel.
5. Ensure that the storage area for patients drugs is well lighted, of sufficient size to permit storage without crowding, and is maintained at appropriate temperature.
6. Ensure that poison and drugs for "external use only" are kept in a cabinet and separate from other medications.
7. Provide for the disposition of discontinued drugs under the following conditions:
  - a. Discontinued drugs may be returned to the pharmacy for resale or transferred to another pharmacy for redispensing to the indigent if authorized by §54.1-3411.1 and 18VAC110-20-400, or ~~destroyed~~ disposed of by appropriate means in compliance with 18VAC110-20-210 and with any applicable local, state, and federal laws and regulations.
  - b. Drug destruction at the pharmacy shall be witnessed by the PIC and by another pharmacy employee. The pharmacy may transfer the drugs for destruction to an entity appropriately licensed to accept returns for destruction. Drug destruction at the facility shall be witnessed by the director of nursing or, if there is no director, then by the facility administrator and by a pharmacist providing pharmacy services to the facility or by another employee authorized to administer medication.
  - c. A complete and accurate record of the drugs returned or destroyed or both shall be made. The original of the record of destruction shall be signed and dated by the persons witnessing the destruction and maintained at the long-term care facility for a period of two years. A copy of the destruction record shall be maintained at the provider pharmacy for a period of two years.

d. Long-term care facilities shall destroy discontinued or unused drugs or return them to the pharmacy without 30 days of the date the drug was discontinued.

8. Ensure that appropriate drug reference materials are available in the facility units.

9. Ensure that a monthly review of drug therapy by a pharmacist is conducted for each patient in long-term care facilities except those licensed under Title 63.2 of the Code of Virginia. Such review shall be used to determine any irregularities, which may include but not be limited to drug therapy, drug interactions, drug administration or transcription errors. The pharmacist shall sign and date the notation of the review. All significant irregularities shall be brought to the attention of the attending practitioner or other party having authority to correct the potential problem.

### **18VAC110-20-535. Repackaging of already dispensed prescriptions.**

The primary provider pharmacy for a long-term care facility may, but shall not be required to, repackage a resident's prescription drugs dispensed by another pharmacy into the unit-dose or compliance packaging system used by the long-term care facility to assist in maintaining a uniform or more accurate system of administration.

1. Such repackaging shall only be done at the provider pharmacy.

2. Unit dose repackaging shall comply with requirements of 18VAC110-20-420 and compliance packaging shall comply with 18VAC110-20-340 B.

3. Records shall be maintained of all such repackaging of previously dispensed medications to include date; repackaging pharmacist's initials (or those of the checking pharmacist); and the pharmacy name, address, and prescription number of the original dispensing.

4. Any portion of a resident's medication not placed into unit dose or compliance packaging may be returned to the resident or kept for subsequent repackaging at the provider pharmacy in the original labeled container. If kept at the pharmacy, the medication shall be stored within the prescription department but separate from any working stock of drugs used for dispensing by the pharmacy, and shall only be used for the patient to whom the medication was originally dispensed.

### **18VAC110-20-536. Prescription drugs sent outside the facility.**

A. The provider pharmacy shall assure that residents who leave a long-term care facility for short periods of time or are discharged and who are allowed to take dispensed prescription medications with them, do so only in appropriate packaging, properly labeled for outpatient use.

B. Pharmacies that provide medication to residents in compliance packaging that meets the requirements of 18VAC110-20-340 B, shall assure that if the facility separates and sends only the individual containers needed during the time the resident is away without the main package label, that the resident is also given a copy of the main package label or other appropriate documentation that contains the complete labeling information on the main package label.

### **18VAC110-20-540. Emergency drug kit.**

The pharmacist providing services may prepare an emergency kit for a long-term care facility in which ~~only those persons licensed to administer are administering drugs~~ access to the kit is restricted to a licensed nurse, pharmacist, or prescriber and only these licensed individuals may administer a drug taken from the kit and only under the following conditions:

1. The contents of the emergency kit shall be of such a nature that the absence of the drugs would threaten the survival of the patients.

2. The contents of the kit shall be determined by the provider pharmacist in consultation with the medical and nursing staff of the institutions and shall be limited to drugs for administration by injection or inhalation only, except that Nitroglycerin SL may be included.

3. The kit is sealed in such a manner that it will preclude any possible loss of the drug.

a. The dispensing pharmacy must have a method of sealing such kits so that once the seal is broken, it cannot be reasonably resealed without the breach being detected.

b. If a seal is used, it shall have a unique numeric or alphanumeric identifier to preclude replication and/or resealing. The pharmacy shall maintain a record of the seal identifiers when placed on a box or kit and maintain the record until such time as the seal is replaced.

c. In lieu of seals, a kit with a built-in mechanism preventing resealing or relocking once opened except by the provider pharmacy is also acceptable.

4. The kit shall have a form to be filled out upon opening the kit and removing contents to write the name of the person opening the kit, the date, time and name and quantity of item(s) removed. The opened kit is maintained under secure conditions and returned to the pharmacy within 72 hours for replenishing.

5. Any drug used from the kit shall be covered by a prescription, signed by the prescriber, when legally required, within 72 hours.

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## 18VAC110-20-550. Stat-drug box.

An additional drug box called a stat-drug box may be prepared by a pharmacy to provide for initiating therapy prior to the receipt of ordered drugs from the pharmacy. Access to the stat-drug box is restricted to a licensed nurse, pharmacist, or prescriber and only these licensed individuals may administer a drug taken from the stat-drug box. Additionally, a valid prescription or lawful order of a prescriber must exist prior to the removal of any drug from the stat-drug box. A stat-drug box ~~shall be provided to those facilities in which only those persons licensed to administer are administering drugs and~~ shall be subject to the following conditions:

1. The box is sealed in such a manner that will preclude the loss of drugs.
  - a. The dispensing pharmacy must have a method of sealing such boxes so that once the seal is broken, it cannot be reasonably resealed without the breach being detected.
  - b. If a seal is used, it shall have a unique numeric or alphanumeric identifier to preclude replication or resealing, or both. The pharmacy shall maintain a record of the seal identifiers when placed on a box and maintain the record until such time as the seal is replaced.
  - c. In lieu of seals, a box with a built-in mechanism preventing resealing or relocking once opened except by the provider pharmacy is also acceptable.
2. The box shall have a form to be filled out upon opening the box and removing contents to write the name of the person opening the box, the date, time and name and quantity of item(s) removed. When the stat-drug box has been opened, it is returned to the pharmacy.
- ~~3. Any drug used from the box shall be covered by a drug order signed by the prescriber, when legally required, within 72 hours.~~
4. ~~3.~~ There shall be a listing of the contents of the box maintained in the pharmacy and also attached to the box in the facility. This same listing shall become a part of the policy and procedure manual of the facility served by the pharmacy.
- ~~5.~~ 4. The drug listing on the box shall bear an expiration date for the box. The expiration date shall be the day on which the first drug in the box will expire.
- ~~6.~~ 5. The contents of the box shall be limited to those drugs in which a delay in initiating therapy may result in harm to the patient.
  - a. The listing of drugs contained in the stat-drug box shall be determined by the provider pharmacist in consultation with the medical and nursing staff of the long-term care facility.

b. The stat-drug box shall contain no Schedule II drugs.

c. The stat-drug box shall contain no more than one Schedule III through V drug in each therapeutic class and no more than five doses of each.

## 18VAC110-20-555. Use of automated dispensing devices.

Nursing homes licensed pursuant to Chapter 5 (§32.1-123 et seq.) of Title 32.1 of the Code of Virginia may use automated drug dispensing systems, as defined in §54.1-3401 of the Code of Virginia, upon meeting the following conditions:

1. Drugs placed in an automated drug dispensing system in a nursing home shall be under the control of the pharmacy providing services to the nursing home, the pharmacy shall have on-line communication with and control of the automated drug dispensing system, and access to any drug for a patient shall be controlled by the pharmacy.
2. A nursing home without an in-house pharmacy shall obtain a controlled substances registration prior to using an automated dispensing system.
3. Removal of drugs from any automated drug dispensing system for administration to patients can only be made pursuant to a valid prescription or lawful order of a prescriber; under the following conditions:
  - a. A drug may not be administered to a patient from an automated dispensing device until a pharmacist has reviewed the prescription order and electronically authorized the access of that drug for that particular patient in accordance with the order.
  - b. The PIC of the provider pharmacy shall ensure that a pharmacist who has on-line access to the system is available at all times to review a prescription order as needed and authorize administering pursuant to the order reviewed.
  - c. Drugs that would be stocked in an emergency drug kit pursuant to 18VAC110-20-540 may be accessed prior to receiving electronic authorization from the pharmacist provided that the absence of the drugs would threaten the survival of the patients.
  - d. Automated dispensing devices shall be capable of producing a hard-copy record of distribution that shall show patient name, drug name and strength, dose withdrawn, dose to be administered, date and time of withdrawal from the device, and identity of person withdrawing the drug.
4. Drugs placed in automated dispensing devices shall be in the manufacturer's sealed original unit dose or unit-of-use packaging or in repackaged unit-dose containers in compliance with the requirements of 18VAC110-20-355 relating to repackaging, labeling, and records.

5. Prior to the removal of drugs from the pharmacy, a delivery record shall be generated for all drugs to be placed in an automated dispensing device which shall include the date; drug name, dosage form, and strength; quantity; nursing home; a unique identifier for the specific device receiving drugs; and initials of the pharmacist checking the order of drugs to be removed from the pharmacy and the records of distribution for accuracy.

6. At the direction of the PIC, drugs may be loaded in the device by a pharmacist or a pharmacy technician adequately trained in the proper loading of the system.

7. At the time of loading, the delivery record for all Schedule II through ~~V~~ VI drugs shall be signed by a nurse or other person authorized to administer drugs from that specific device, and the record returned to the pharmacy ~~and maintained in chronological order for a period of two years from date of delivery. The delivery record and required signatures may be generated or maintained electronically provided the system being used has the capability of recording an electronic "signature" which is a unique identifier and restricted to the individual receiving the drugs and provided that this record is maintained in a "read only" format which cannot be altered after the information is recorded. The electronic record shall be readily retrievable, maintained for a period of two years, and the system used shall be capable of producing a hard copy printout of the record upon request.~~

8. At the time of loading any Schedule II through V drug, the person loading will verify that the count of that drug in the automated dispensing device is correct. Any discrepancy noted shall be recorded on the delivery record and immediately reported to the PIC, who shall be responsible for reconciliation of the discrepancy or the proper reporting of a loss.

9. The PIC of the provider pharmacy or his designee shall conduct at least a monthly audit to review distribution and administration of Schedule II through V drugs from each automated dispensing device as follows:

a. The audit shall reconcile records of all quantities of Schedule II through V drugs dispensed from the pharmacy with records of all quantities loaded into each device to detect whether any drugs recorded as removed from the pharmacy were diverted rather than being placed in the proper device.

b. A discrepancy report shall be generated for each discrepancy in the count of a drug on hand in the device. Each such report shall be resolved by the PIC or his designee within 72 hours of the time the discrepancy was discovered or, if determined to be a theft or an unusual loss of drugs, shall be immediately reported to the board in accordance with §54.1-3404 E of the Drug Control Act.

c. The audit shall include a review of a sample of administration records from each device per month for possible diversion by fraudulent charting. ~~A sample from each device shall not be less than 24 consecutive hours within the month being audited~~ shall include all Schedule II-V drugs administered for a time period of not less than 24 consecutive hours during the audit period.

d. The audit shall include a check of medical records to ensure that a valid order exists for a random sample of doses recorded as administered.

e. The audit shall also check for compliance with written procedures for security and use of the automated dispensing devices, accuracy of distribution from the device, and proper recordkeeping.

f. ~~The hard copy distribution and administration records printed out and reviewed in the audit shall be initialed and dated by the person conducting the audit and maintained in the pharmacy for a period of two years. If nonpharmacist personnel conduct the audit, a pharmacist shall review the record and shall initial and date the record. These distribution records reviewed in conducting the audit may be maintained electronically provided they can be readily retrieved upon request; provided they are maintained in a "read only" format which does not allow alteration of the records; and provided a log is maintained for a period of two years showing the dates of audit and review, the identity of the automated dispensing device being audited, the time period covered by the audit and review, and the initials of all reviewers.~~

10. Automated dispensing devices shall be inspected monthly by pharmacy personnel to verify proper storage, proper location of drugs within the device, expiration dates, the security of drugs and validity of access codes.

11. Personnel allowed access to an automated dispensing device shall have a specific access code which records the identity of the person accessing the device.

12. The PIC of the pharmacy providing services to the nursing home shall establish, maintain, and assure compliance with written policy and procedure for the accurate stocking and proper storage of drugs in the automated drug dispensing system, accountability for and security of all drugs maintained in the automated drug dispensing system, preventing unauthorized access to the system, tracking access to the system, complying with federal and state regulations related to the storage and dispensing of controlled substances, maintaining patient confidentiality, maintaining required records, and assuring compliance with the requirements of this chapter. The manual shall be capable of being accessed at both the pharmacy and the nursing home.

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13. All records required by this section shall be filed in chronological order from date of issue and maintained for a period of not less than two years. Records shall be maintained at the address of the pharmacy providing services to the nursing home except:

a. Manual Schedule VI distribution records may be maintained in offsite storage or electronically as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

b. Distribution and delivery records and required signatures may be generated or maintained electronically provided:

(1) The system being used has the capability of recording an electronic signature that is a unique identifier and restricted to the individual required to initial or sign the record.

(2) The records are maintained in a read-only format that cannot be altered after the information is recorded.

(3) The system used is capable of producing a hard-copy printout of the records upon request.

c. Schedule II-V distribution and delivery records may only be stored offsite or electronically as described in subdivisions 13 a and b of this section if authorized by DEA or in federal law or regulation.

d. Hard-copy distribution and administration records that are printed and reviewed in conducting required audits may be maintained off site or electronically provided they can be readily retrieved upon request; provided they are maintained in a read-only format that does not allow alteration of the records; and provided a separate log is maintained for a period of two years showing dates of audit and review, the identity of the automated dispensing device being audited, the time period covered by the audit and review, and the initials of all reviewers.

## Part XIII

### Other Institutions and Facilities

#### **18VAC110-20-570. Drugs in infirmaries/first aid rooms.**

A. ~~Controlled~~ Prescription drugs purchased by an institution, agency, or business within the Commonwealth, having been purchased in the name of a practitioner licensed by the Commonwealth of Virginia and who is employed by an institution, agency, or business which does not hold a pharmacy permit, shall be used only for administering to those persons at that institution, agency, or business.

B. All ~~controlled~~ prescription drugs shall be maintained and secured in a suitable locked storage area, the key to which

will be in the possession of the practitioner or nurse who is under the direction and supervision of the practitioner.

C. Such institution, agency, or business shall adopt a specific protocol for the administration of prescription drugs, listing the inventory of such drugs maintained, and authorizing the administering of such drugs in the absence of a practitioner in an emergency situation when the timely prior verbal or written order of a prescriber is not possible. Administering of such drugs shall be followed by written orders.

1. For the purpose of this chapter, "emergency" means a circumstance requiring administration of ~~controlled~~ prescription drugs necessary to preserve life or to prevent significant or permanent injury or disability.

2. The protocol shall be maintained for inspection and documentation purposes.

~~D. A nurse may, in the absence of a practitioner, administer and provide nonprescription drugs in unit dose containers in quantities which in the professional judgment of the nurse will maintain the person at an optimal comfort level until the person's personal practitioner can be consulted. The administering and providing of such medication must be in accordance with explicit instructions of a specific protocol promulgated by the practitioner in charge of the institution, agency, or business.~~

#### **18VAC110-20-580. Humane societies and animal shelters.**

A humane society or animal shelter, after having obtained the proper permits pursuant to state and federal laws, may purchase, possess and administer any drug approved by the State Veterinarian to euthanize injured, sick, homeless and unwanted domestic pets and animals provided that these procedures are followed:

1. Drugs ordered by a humane society for euthanasia shall only be stored and administered at the address of the humane society. Humane societies shall not order or possess a stock of drugs for any purpose other than euthanasia.

~~2.~~ 2. A veterinarian shall provide general supervision for the facility and shall provide and certify training in accordance with guidelines set forth by the State Veterinarian to the person(s) responsible for administration of the drugs. Certification of training signed by the veterinarian providing the training shall be maintained at the facility for each person administering drugs and must be retained for not less than two years after the person ceases administering.

~~3.~~ 3. The person in charge of administration of drugs for euthanasia for the facility shall obtain the required permit and controlled substances registration from the board and shall be responsible for maintaining proper security and

required records of all controlled substances obtained and administered.

a. If that person ceases employment with the facility or relinquishes his position, he shall immediately return the permit to the board and shall take a complete and accurate inventory of all drugs in stock.

b. An application for a new permit shall be filed with the required fee within 14 days on a form provided by the board. At that time, the new responsible person shall take a complete and accurate inventory of all drugs in stock.

~~3.~~ 4. Drugs shall be stored in a secure, locked place and only the person(s) responsible for administering may have access to the drugs.

~~4.~~ 5. Any drug used shall be obtained and administered in the injectable form only.

~~5.~~ 6. All invoices and order forms shall be maintained for a period of two years.

~~6.~~ 7. Complete and accurate records shall be maintained for two years on the administration of the drug. The record shall show the name and strength of the drug, date of administration, the species of the animal, the weight of animal, the amount of drug administered and the signature of the person administering the drug.

**18VAC110-20-590. Drugs in correctional institutions facilities.**

A. All prescription drugs at any correctional ~~unit~~ facility shall be obtained only on an individual prescription basis from a pharmacy and subject to the following conditions:

1. All prepared drugs shall be maintained in a suitable locked storage area with only the person responsible for administering the drugs having access.

2. Complete and accurate records shall be maintained of all drugs received, administered and discontinued. The administration record shall show the:

- a. Patient name;
- b. Drug name and strength;
- c. Number of dosage units received;
- d. Prescriber's name; and
- e. Date, time and signature of the person administering the individual dose of drug.

3. All unused or discontinued drugs shall be sealed and the amount in the container at the time of the sealing shall be recorded on the drug administration record. Such drugs shall be returned to the provider pharmacy or to a secondary pharmacy along with the drug administration record, a copy of the drug administration record, or other

form showing substantially the same information, within 30 days of discontinuance.

a. The provider or secondary pharmacy shall conduct random audits of returned drug administration records for accountability.

b. The drug administration records shall be filed in chronological order by the provider or secondary pharmacy and maintained for a period of one year or, at the option of the facility, the records may be returned by the pharmacy to the facility.

c. Drugs may be returned to pharmacy stock in compliance with the provisions of 18VAC110-20-400.

d. Other drugs shall be disposed of or destroyed by the provider pharmacy in accordance with local, state, and federal regulations.

4. Alternatively, drugs for destruction may be forwarded by a pharmacist directly from the correctional facility to a returns company after performing the audit required by subdivision 3 a of this subsection and ensuring the proper maintenance of the administration records.

B. Emergency and stat-drug box. An emergency box and a stat-drug box may be prepared for ~~the a correctional~~ a correctional facility served by the pharmacy pursuant to 18VAC110-20-540 and 18VAC110-20-550 provided that the facility employs one or more full-time physicians, registered nurses, licensed practical nurses, or physician assistants ~~or correctional health assistants~~.

C. Prescription drugs, including but not limited to vaccines, may be ~~stocked~~ floor-stocked only at a medical clinic or surgery center that is part of a correctional facility and that is staffed by one or more ~~physicians~~ prescribers during the hours of operation, provided the clinic first obtains a controlled substances registration and complies with the requirements of 18VAC110-20-690, 18VAC110-20-700, 18VAC110-20-710, and 18VAC110-20-720.

**18VAC110-20-610. Exempted chemical preparations.**

The list of exempt chemical preparations ~~set forth in~~ pursuant to 21 CFR §1308.24 and maintained by the administrator of DEA is adopted pursuant to the authority set forth in §§54.1-3443, 54.1-3450 and 54.1-3452 of the Drug Control Act.

**18VAC110-20-620. Exempted prescription products.**

The list of exempt prescription products ~~set forth in~~ pursuant to 21 CFR 1308.32 and maintained by the administrator of DEA is adopted pursuant to the authority set forth in §§54.1-3443, 54.1-3450 and 54.1-3452 of the Drug Control Act; the exempted prescription products are drugs which are subject to the provisions of §54.1-3455 of the Drug Control Act.

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## **18VAC110-20-621. Exempted anabolic steroid products.**

The list of exempt anabolic steroid products ~~set forth in~~ pursuant to 21 CFR 1308.34 and maintained by the administrator of DEA is adopted pursuant to the authority set forth in §§54.1-3443, 54.1-3450 and 54.1-3452 of the Drug Control Act; the exempted anabolic steroid products are drugs which are subject to the provisions of §54.1-3455 of the Drug Control Act.

## **18VAC110-20-622. Excluded veterinary anabolic steroid implant products.**

The list of excluded veterinary anabolic steroid implant products ~~set forth in~~ pursuant to 21 CFR 1308.26 and maintained by the administrator of DEA is adopted only for legitimate veterinary use pursuant to the authority set forth in §§54.1-3443, 54.1-3450 and 54.1-3452 of the Drug Control Act; the exempted anabolic steroid products are drugs which are subject to the provisions of §54.1-3455 of the Drug Control Act when used for implant to cattle or other nonhuman species. These products are not excluded from Schedule III if prescribed, administered, dispensed, or otherwise distributed for human use.

## **18VAC110-20-680. Medical equipment suppliers.**

A. A medical equipment supplier's location shall be inspected by the board prior to engaging in business. The location shall be clean and sanitary and shall have a system of temperature control to provide for specified storage conditions for any Schedule VI drug or device.

B. Hypodermic needles and syringes and Schedule VI drugs shall not be placed on open display or in an open area where patrons will have access to such items. No Schedule VI devices shall be placed in an area where responsible parties cannot exercise reasonable supervision and control.

C. A medical equipment supplier shall receive a valid order from a practitioner prior to dispensing and shall maintain this order on file on the premises for a period of two years from date of last dispensing. The original order may be kept at a centralized office as long as it is readily retrievable within 48 hours and a copy of the order is kept on the premises of the dispensing supplier. In lieu of a hard copy, an electronic image of an order may be maintained in an electronic database provided it preserves and provides an exact image of the order that is clearly legible and made available within 48 hours of a request by a person authorized by law to have access to prescription information.

D. Medical equipment suppliers shall make a record at the time of dispensing. This record shall be maintained on the premises for two years from date of dispensing and shall include:

1. Name and address of patient;
2. Item dispensed and quantity, if applicable; and

3. Date of dispensing.

### Part XVI

### Controlled Substances Registration for Other Persons or Entities

## **18VAC110-20-690. Persons or entities authorized or required to obtain a controlled substances registration.**

A. A person or entity which maintains or intends to maintain a supply of Schedule II through Schedule VI controlled substances, other than manufacturers' samples, ~~in order to administer such drugs~~ in accordance with provisions of the Drug Control Act (§54.1-3400 et seq. of the Code of Virginia) may apply for a controlled substances registration on forms approved by the board.

B. Persons or entities which may be registered by the board shall include, but not be limited to, hospitals without in-house pharmacies, nursing homes without in-house pharmacies that use automated drug dispensing systems, ambulatory surgery centers, outpatient clinics, alternate delivery sites, and emergency medical services agencies provided such persons or entities are otherwise authorized by law and hold required licenses or appropriate credentials to administer the drugs for which the registration is being sought.

C. In determining whether to register an applicant, the board shall consider factors listed in subsections A and D of §54.1-3423 of the Code of Virginia and compliance with applicable requirements of this chapter.

1. The proposed location shall be inspected by an authorized agent of the board prior to issuance of a controlled substances registration.

2. Controlled substances registration applications that indicate a requested inspection date, or requests that are received after the application is filed, shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

3. Requested inspection dates that do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

4. Any person wishing to change an approved location of the drug stock, make structural changes to an existing approved drug storage location, or make changes to a previously approved security system shall file an application with the board and be inspected consistent with subsection B of this section.

5. Drugs shall not be stocked within the proposed drug storage location or moved to a new location until approval is granted by the board.

D. The application shall be signed by a person who will act as a responsible party for the controlled substances. The responsible party may be a prescriber, nurse, pharmacist, or pharmacy technician for alternate delivery sites or other

person approved by the board who is authorized to administer or otherwise possess the controlled substances for that type entity.

~~D.~~ E. The board may require a person or entity to obtain a controlled substances registration upon a determination that Schedule II through VI controlled substances have been obtained and are being used as common stock by multiple practitioners and that one or more of the following factors exist:

1. A federal, state, or local government agency has reported that the person or entity has made large purchases of controlled substances in comparison with other persons or entities in the same classification or category.
2. The person or entity has experienced a diversion, theft, or other unusual loss of controlled substances which requires reporting pursuant to §54.1-3404 of the Drug Control Act.
3. The person or entity has failed to comply with recordkeeping requirements for controlled substances.
4. The person or entity or any other person with access to the common stock has violated any provision of federal, state, or local law or regulation relating to controlled substances.

**18VAC110-20-700. Requirements for supervision for controlled substances registrants.**

A. A practitioner licensed in Virginia shall provide supervision for all aspects of practice related to the maintenance and use of controlled substances as follows:

1. In a hospital or nursing home without an in-house pharmacy, a pharmacist shall supervise.
2. In an emergency medical services agency, the operational medical director shall supervise.
3. For any other ~~person or entity approved by the board, a practitioner of pharmacy, medicine, osteopathy, podiatry, dentistry, or veterinary medicine~~ type of applicant or registrant, a pharmacist or a prescriber whose scope of practice is consistent with the practice of the ~~person or entity~~ applicant or registrant and who is approved by the board ~~shall~~ may provide the required supervision.

B. The supervising practitioner shall approve the list of drugs which may be ordered by the holder of the controlled substances registration; possession of controlled substances by the entity shall be limited to such approved drugs. The list of drugs approved by the supervising practitioner shall be maintained at the address listed on the controlled substances registration.

C. Access to the controlled substances shall be limited to the supervising practitioner or to those persons who are authorized by the supervising practitioner and who are

authorized by law to administer drugs in Virginia, or to other such persons as designated by the supervising practitioner or the responsible party to have access in an emergency situation. If approved by the supervising practitioner, pharmacy technicians may have access for the purpose of delivering controlled substances to the registrant, stocking controlled substances in automated dispensing devices, conducting inventories, audits and other recordkeeping requirements, and overseeing delivery of dispensed prescriptions at an alternate delivery site.

D. The supervising practitioner shall establish procedures for and provide training as necessary to ensure compliance with all requirements of law and regulation, including, but not limited to, storage, security, and recordkeeping.

E. Within 14 days of a change in the responsible party or supervising practitioner assigned to the registration, either the responsible party or outgoing responsible party shall inform the board and a new application shall be submitted indicating the name and license number, if applicable, of the new responsible party or supervising practitioner.

**18VAC110-20-710. Requirements for storage and security for controlled substances registrants.**

A. Drugs shall be stored under conditions which meet USP-NF specifications or manufacturers' suggested storage for each drug.

B. Any drug which has exceeded the expiration date shall not be administered; it shall be separated from the stock used for administration and maintained in a separate, locked area until properly disposed.

C. If a controlled substances registrant wishes to dispose of unwanted or expired Schedule II through VI drugs, he shall transfer the drugs to another person or entity authorized to possess and to provide for proper disposal of such drugs.

D. Drugs shall be maintained in a lockable cabinet, cart, device or other area which shall be locked at all times when not in use. The keys or access code shall be restricted to the supervising practitioner and persons designated access in accordance with 18VAC110-20-700 C.

E. In a facility not staffed 24 hours a day, the drugs shall be stored in a fixed and secured room, cabinet or area which has a security device for the detection of breaking which meets the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.
2. The installation ~~shall be hard wired and both the installation~~ and device shall be based on accepted ~~burglar~~ alarm industry standards.

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3. The device shall be maintained in operating order ~~and shall~~ have an auxiliary source of power, be monitored in accordance with accepted industry standards, be maintained in operating order; and shall be capable of sending an alarm signal to the monitoring entity if breached and the communication line is not operational.

4. The device shall fully protect all areas where prescription drugs are stored and shall be capable of detecting breaking by any means when activated.

5. Access to the alarm system shall be restricted to only designated and necessary persons, and the system shall be activated whenever the drug storage areas are closed for business.

6. An alarm system is not required for researchers, animal control officers, humane societies, or alternate delivery sites as provided in 18VAC110-20-275.

VA.R. Doc. No. R07-753; Filed September 23, 2008, 1:32 p.m.

## Emergency Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20).**

**18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehousemen (amending 18VAC110-50-20).**

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

Effective Date: September 23, 2008, through September 22, 2009.

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](mailto:scotti.russell@dhp.virginia.gov).

### Preamble:

*Chapter 330 of the 2008 Acts of the Assembly eliminated the specified date of December 31 for renewal of various permits and registrations under the Board of Pharmacy and added that a date must be determined by the board in regulation. The second enactment on Chapter 330 requires that the board promulgate regulations to implement the provisions of the act to be effective within 280 days of its enactment. Therefore, there is an "emergency situation" as defined in §2.2-4011 of the Administrative Process Act.*

*All licenses, permits and registrations have expired on December 31 of each year, which has created an exceptional workload for staff during one period of time. The board sought legislation to allow expiration dates for permitted or registered facilities to be set on dates*

*different from those of licensed pharmacists or registered technicians to distribute the renewals.*

*All facility permits or registrations that currently expire on December 31 will continue to be in effect until the next renewal date as set by the board in regulation. Resident and nonresident pharmacy permits will next expire on April 30, 2009, so they will get an extra four months on their permits. Manufacturers, wholesale distributors, warehousemen, physicians permitted to practice pharmacy, medical equipment suppliers, humane societies, and controlled substance registrations will expire on February 28, 2009, so they will get an extra two months. The goal is to distribute the workload for board and department staff and to make it less burdensome for pharmacies, some of which pay the renewal for the pharmacy permit and all licensed or registered staff.*

## 18VAC110-20-20. Fees.

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

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

### C. Initial application fees.

1. Pharmacist license	\$180
2. Pharmacy intern registration	\$15
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Permitted physician licensed to dispense drugs	\$270
6. Medical equipment supplier permit	\$180
7. Humane society permit	\$20
8. Nonresident pharmacy	\$270
9. Controlled substances registrations <del>(Between November 2, 2005, and December 31, 2006, the application fee for a controlled substance registration shall be \$50)</del>	\$90
10. Robotic pharmacy system approval	\$150
11. Innovative program approval.	\$250

If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.

- 12. Approval of a pharmacy technician training program \$150
- 13. Approval of a continuing education program \$100

D. Annual renewal fees.

- 1. Pharmacist active license – due December 31 \$90
- 2. Pharmacist inactive license – due December 31 \$45
- 3. Pharmacy technician registration – due December 31 \$25
- 4. Pharmacy permit – due April 30 \$270
- 5. Physician permit to practice pharmacy – due February 28 \$270
- 6. Medical equipment supplier permit – due February 28 \$180
- 7. Humane society permit – due February 28 \$20
- 8. Nonresident pharmacy – due April 30 \$270
- 9. Controlled substances registrations – due February 28 \$90
- 10. Innovative program continued approval based on board order not to exceed \$200 per approval period.

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

- 1. Pharmacist license \$30
- 2. Pharmacist inactive license \$15
- 3. Pharmacy technician registration \$10
- 4. Pharmacy permit \$90
- 5. Physician permit to practice pharmacy \$90
- 6. Medical equipment supplier permit \$60
- 7. Humane society permit \$5
- 8. Nonresident pharmacy \$90
- 9. Controlled substances registrations \$30

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the

discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

- 1. Pharmacist license \$210
- 2. Pharmacist license after revocation or suspension \$500
- 3. Pharmacy technician registration \$35
- 4. Pharmacy technician registration after revocation or suspension \$125
- 5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:
  - a. Pharmacy permit \$240
  - b. Physician permit to practice pharmacy \$240
  - c. Medical equipment supplier permit \$210
  - d. Humane society permit \$30
  - e. Nonresident pharmacy \$115
  - f. Controlled substances registration \$180

G. Application for change or inspection fees for facilities or other entities.

- 1. Change of pharmacist-in-charge \$50
- 2. Change of ownership for any facility \$50
- 3. Inspection for remodeling or change of location for any facility 150
- 4. Reinspection of any facility \$150
- 5. Board-required inspection for a robotic pharmacy system \$150
- 6. Board-required inspection of an innovative program location \$150
- 7. Change of pharmacist responsible for an approved innovative program \$25

H. Miscellaneous fees.

- 1. Duplicate wall certificate \$25
- 2. Returned check \$35

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# Regulations

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~~I. For the annual renewal due on or before December 31, 2006, the following fees shall be imposed for a license, permit or registration:~~

<del>1. Pharmacist active license</del>	<del>\$50</del>
<del>2. Pharmacist inactive license</del>	<del>\$25</del>
<del>3. Pharmacy technician registration</del>	<del>\$15</del>
<del>4. Pharmacy permit</del>	<del>\$210</del>
<del>5. Physician permit to practice pharmacy</del>	<del>\$210</del>
<del>6. Medical equipment supplier permit</del>	<del>\$140</del>
<del>7. Humane society permit</del>	<del>\$20</del>
<del>8. Nonresident pharmacy</del>	<del>\$210</del>
<del>9. Controlled substances registrations</del>	<del>\$50</del>

## 18VAC110-50-20. Fees.

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

### B. Initial application fees.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	\$180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

C. Annual renewal fees shall be due on February 28 of each year.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	\$180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Nonrestricted manufacturer permit	\$90
2. Restricted manufacturer permit	\$60
3. Wholesale distributor license	\$90

4. Warehouser permit	\$90
5. Nonresident wholesale distributor	\$90
6. Controlled substances registration	\$30

### E. Reinstatement fees.

1. Any entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement, but shall apply for a new permit or registration.

3. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Nonrestricted manufacturer permit	\$240
b. Restricted manufacturer permit	\$210
c. Wholesale distributor license	\$240
d. Warehouser permit	\$240
e. Nonresident wholesale distributor	\$240
f. Controlled substances registration	\$180

### F. Application for change or inspection fees.

1. Reinspection fee	\$150
2. Inspection fee for change of location, structural changes, or security system changes	\$150
3. Change of ownership fee	\$50
4. Change of responsible party	\$50

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

~~H. For the annual renewal due on or before December 31, 2006, the following fees shall be imposed for a license or permit:~~

<del>1. Nonrestricted manufacturer permit</del>	<del>\$210</del>
<del>2. Restricted manufacturer permit</del>	<del>\$140</del>
<del>3. Wholesale distributor license</del>	<del>\$210</del>

4. <del>Warehouser permit</del>	\$210
5. <del>Nonresident wholesale distributor</del>	\$210

VA.R. Doc. No. R09-1311; Filed September 23, 2008, 1:34 p.m.

**BOARD OF PHYSICAL THERAPY**

**Notice of Extension of Emergency Regulation**

**Title of Regulation:** 18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-90, 18VAC112-20-130, 18VAC112-20-131, 18VAC112-20-150; adding 18VAC112-20-81).

**Statutory Authority:** §§54.1-2400 and 54.1-3482.1 of the Code of Virginia.

**Effective Dates:** November 1, 2007, through April 29, 2009.

The Board of Physical Therapy requested an extension of the emergency regulations, 18VAC112-20, pursuant to §2.2-4011 of the Code of Virginia to allow time for the permanent regulations to complete the executive review process and the requirements of the Administrative Process Act. The emergency regulations, relating to direct access certification, were published in 24:4 VA.R. 496-500 October 29, 2007 (<http://legis.state.va.us/codecomm/register/vol24/iss04/v24i04.pdf>) with effective dates of November 1, 2007, through October 31, 2008.

The Governor approved the department's request to extend the expiration date of the emergency regulations for six months as provided in §2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through April 29, 2009.

**Agency Contact:** Lisa R. Hahn, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4424, FAX (804) 527-4413, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

VA.R. Doc. No. R08-857; Filed September 23, 2008, 2:48 p.m.



**TITLE 22. SOCIAL SERVICES**

**STATE BOARD OF SOCIAL SERVICES**

**Proposed Regulation**

**Title of Regulation:** 22VAC40-35. Virginia Independence Program (amending 22VAC40-35-10, 22VAC40-35-20, 22VAC40-35-40 through 22VAC40-35-120, 22VAC40-35-130; repealing 22VAC40-35-5, 22VAC40-35-125, 22VAC40-35-126, 22VAC40-35-127, 22VAC40-35-128).

**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 December 12, 2008.

**Agency Contact:** Mark L. Golden, TANF Program Manager, Department of Social Services, Division of Benefit Programs, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7356, TTY (800) 828-1120, or email [mark.golden@dss.virginia.gov](mailto:mark.golden@dss.virginia.gov).

**Basis:** Pursuant to §63.2-217 of the Code of Virginia, the State Board of Social Services has authority to promulgate rules and regulations necessary for operation of all assistance programs. The amendments to the regulations are discretionary changes that will make the regulations more complete and consistent with state law.

**Purpose:** The AFDC program was replaced by the TANF program with passage of the Personal Responsibility and Work Opportunity Reconciliation Act. The term AFDC is therefore obsolete and needs to be updated.

The Virginia Targeted Jobs Grant Program has been discontinued by the General Assembly. The references to the program are obsolete and need to be removed.

The pertinent sections of the Virginia State Code regarding the TANF program were recodified. The state code citations in the regulation are out of date and need to be updated.

The exemptions from VIEW are being updated for consistency with state code. While all of the exemptions listed in state code were allowed in practice, they were not all listed in the regulation. Having a complete, comprehensive list will make the regulation more complete and understandable for citizens.

Allowing greater participation in educational activities for those participating in work experience will provide for better long-range outcomes for recipients of TANF.

Former VIEW participants in the period of ineligibility after VIEW participation should have the opportunity to receive additional months of TANF assistance in certain circumstances. This is addressed by expanding the opportunity to request an evaluation for a hardship exception to include requests received from former VIEW participants in the period of ineligibility after VIEW participation, and from individuals who are participating in VIEW and within 60 days of the scheduled closure of their TANF case due to the receipt of 24 months of TANF benefits.

The change to the regulation regarding noncooperation in establishing paternity was made at the request of the Office of the Attorney General to avoid the potential for litigation. It was determined that the regulation concerning cooperation in establishing paternity was not comprehensive and did not address the situation of a client naming numerous potential putative fathers.

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# Regulations

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Substance: The regulation will be amended by updating state code citations that changed as a result of recodification, removing obsolete references to Aid to Families with Dependent Children (AFDC) and adding references to the current Temporary Assistance for Needy Families (TANF) program, updating the VIEW exemptions and definitions, removing obsolete language concerning the receipt of federal waivers, removing obsolete references to the Virginia Targeted Jobs Grant Program, allowing greater participation in educational activities when a participant is participating in community work experience, expanding opportunities for hardship exceptions, and addressing situations when an applicant for TANF names multiple putative fathers. If an applicant names multiple potential fathers, the applicant will be considered cooperating until five named fathers have been eliminated by genetic testing, which will be paid for by the Division of Child Support Enforcement. If the applicant fails to assume full responsibility for any additional genetic testing, it will be considered noncooperation.

Issues: Removal of obsolete language and references (such as AFDC and Virginia Targeted Jobs Grant) will make the regulation easier to understand for both citizens and local department of social services staff.

Revising the VIEW exemptions and definitions will provide a clearer understanding of all individuals who will be required to participate in the VIEW program.

By allowing VIEW participants to participate in educational activities once the participant has met the required 20 hours per week of participation in a core work activity, the regulation will provide the participant the opportunity to improve his education and skill level to enhance his future employability while concurrently meeting the participation requirements of the VIEW program.

Revising the number of days that the local social services agency has to determine eligibility for diversionary assistance from within 45 days to within 30 days of the date of the receipt of the signed application or within five working days of the receipt of the final verification that substantiates eligibility, whichever occurs first, will allow this policy to match the policy for processing other Temporary Assistance for Needy Families (TANF) applications.

By allowing former VIEW participants in the period of ineligibility after VIEW participation the opportunity to request a hardship exception, the regulation will provide these individuals the same opportunity to receive additional months of TANF assistance as those individuals who request a hardship exception while still participating in the VIEW program (in the 60 days prior to the closure of the TANF case due to receipt of 24 months of TANF benefits). This will establish a uniform guideline for all VIEW participants to be evaluated for a hardship exception regardless of when the request is made – either prior to or after the TANF case closure.

The regulation will allow the client an opportunity to provide a reasonable number (five) of possible fathers in situations when the client does not know the identity of the father to establish paternity and a child support obligation. By establishing uniform guidelines, the client, as well as the local department of social services, can be assured that the same process is applied to each client without variation.

## The 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 regulation governing the Virginia Independence Program to eliminate references to the obsolete (since 2003) Virginia Targeted Jobs Grant (VTJG) program, and corresponding statutory citations, and replace references to the Aid to Families with Dependent Children (AFDC) with Temporary Assistance for Needy Families (TANF). The Board also proposes to 1) reduce the allowable processing time for TANF applications from 45 days to 30 days, 2) revise the definition of “job search” to reflect a federal requirement that states count hours spent searching for jobs rather than number of job searches, 3) clarify requirements for hardship exemptions for the TANF program and 4) set limits on the number of paternity tests (per child) for which the Division of Child Support Enforcement (DCSE) will pay.

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

Estimated Economic Impact. Because the Virginia Independence Program has not been amended in many years, there are references to federal and state programs that either no longer exist (VTJG) or have been modified and renamed (AFDC). The Board proposes to update this regulation so that obsolete references are eliminated and out-of-date references are updated. There are likely no costs associated with these changes; individuals who read this regulation will likely benefit from the additional clarity that is gained from eliminating potentially confusing obsolete language.

Of the other changes that are proposed by the Board only one is likely to (marginally) change the costs that regulated entities or the state will incur. Currently, mothers who are applying for TANF must name the potential father(s) of their child so that he can be tested. Once paternity is established, the Department of Social Services (DSS) can recover the public monies spent on that child from his/her father. Currently DCSE will pay for an unlimited number of paternity tests for each child that will be covered by TANF (DCSE currently requires fathers to reimburse the costs of testing once paternity is established). The Board proposes to amend this rule so that DCSE will only pay for testing of five potential fathers for each covered child. If more than five tests are needed to establish paternity, the mother of the child will be responsible for paying for the additional testing. Refusal to pursue such testing will be deemed as non-

cooperation with the department and can lead to suspension of TANF benefits.

This regulatory change will likely not cause any new costs to be accrued, as no increase or decrease in the cost of testing is anticipated, but it will redistribute some costs from the agency to the mothers of children who are covered by TANF. DCSE does not know how large this redistribution would be because it apparently does not keep data on how many tests it pays for per child. DCSE does report, however, that 6,471 tests were performed in FY2007; these tests cost \$634,197. DCSE was able to recover approximately half of this cost (\$318,717) from the fathers of the children tested. This likely means that only half of the tests run ended with paternity being established.

**Businesses and Entities Affected.** This proposed regulation will affect all individuals who apply for or receive TANF benefits. DSS reports that, on average, 33,312 TANF payments were made per month in FY2007.

**Localities Particularly Affected.** No locality will be particularly 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 affect 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 affect 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 Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The proposed amendments eliminate references to the obsolete Virginia Targeted Jobs Grant (VTJG) program and corresponding statutory citations, and replace applicable references to the Aid to Families with Dependent Children (AFDC) with Temporary Assistance for Needy Families (TANF). The proposed amendments also (i) update statutory references, (ii) reduce the allowable processing time for TANF applications from 45 days to 30 days, (iii) revise the definition of "job search" to reflect a federal requirement that states count hours spent searching for jobs rather than number of job searches, (iv) align exemptions from the Virginia Initiative for Employment Not Welfare (VIEW) with those listed in state code, (v) expand opportunities for hardship exceptions in the TANF program, (vi) allow greater participation in educational activities when participating in community work experience, and (vii) set limits on the number of paternity tests (per child) for which the Division of Child Support Enforcement (DCSE) will pay.*

Part I  
General Provisions

**22VAC40-35-5. Federal waivers. (Repealed.)**

~~The provisions of this regulation requiring additional federal waivers (22VAC40-35-20 A-6, 22VAC40-35-100 B-1 d and D-2 e, and 22VAC40-35-110) shall become effective only upon the receipt of such waivers and completion of the promulgation of these regulations.~~

**22VAC40-35-10. Definitions.**

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

"Actively seeking employment" means satisfactorily participating in any assigned job-seeking activity while in the program.

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# Regulations

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"Adult portion" means the TANF amount paid on behalf of the parent or other caretaker-relative with whom the TANF child resides, including a minor parent. This amount is the difference in the standard of assistance for a family size which includes the adult and the standard of assistance for a family size of one less person.

~~"AFDC Foster Care" means a federal program authorized under §472 of the Social Security Act (42 USC §672) and administered by the Virginia Department of Social Services, which provides financial assistance on behalf of qualifying children.~~

"Agreement" means the written individualized agreement of personal responsibility required by §63.2-608 of the Code of Virginia.

"Allotment" means the monthly food stamp benefit given to a household.

"Applicant" means a person who has applied for TANF or TANF-UP benefits and the disposition of the application has not yet been determined.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive assistance.

"Caretaker-relative" means the natural or adoptive parent or other relative, as specified in 45 CFR 233.90(c)(1)(v), who is responsible for supervision and care of the needy child.

"Case management" means the process of assessing, coordinating, monitoring, delivering or brokering activities and services necessary for VIEW participants to enter employment or employment-related activities as quickly as possible.

"Case management services" means services which include, but are not limited to, job development and job placement, community work experience, education, skills training, and support services.

"Case manager" means the worker designated by the local department of social services, a private-sector contractor or a private community-based organization including nonprofit entities, churches, or voluntary organizations that provide case management services.

"Child day care" means those services for which a participant is eligible pursuant to child day care services policy.

"Child day care services/program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of children under the age of 13 (or children up to 18 years of age if they are physically or mentally incapable of caring for themselves or subject to court supervision) for less than a 24-hour period.

"Community work experience" means work for benefits in a public or private organization that serves a community/public function.

"Department" means the Virginia Department of Social Services.

"Diversionary cash assistance" means a one-time lump sum payment to an individual or third-party vendor to prevent long-term receipt of TANF.

"Division of Child Support Enforcement" or "DCSE" means that division of the Virginia Department of Social Services which is responsible under Title IV-D of the Social Security Act (42 USC §§651-669) to locate noncustodial parents, establish paternity, establish child support and health care orders, enforce payment of delinquent support, and collect and distribute support payments.

"Employer tax credit" means a tax credit available to an employer pursuant to §58.1-439.9 of the Code of Virginia.

"Family" means a TANF assistance unit.

"Food Stamp Program" means the program administered through the Virginia Department of Social Services through which a household can receive food stamps with which to purchase food products.

"Full Employment Program" or "FEP" means subsidized, training-oriented, employment which replaces the TANF and food stamp benefits of a participant. This component of VIEW is designed to train the recipient for a specific job, increase his self-sufficiency and improve his competitiveness in the labor market.

~~"Full time unsubsidized employment" means employment which is considered by the employer to be full time, but in no case less than 30 hours per week, and for which no JOBS, VIEW, TANF, or food stamp funds are used to pay the individual's salary.~~

"Grant" means the monthly TANF benefit payment.

"Hardship exceptions" means prescribed reasons which, if applicable, would allow an extension of receipt of TANF benefits.

"He" means a male or female, as applicable.

"Hiring authority" means an individual with the authority to hire employees for a business.

"In loco parentis" means an adult relative or other adult who is acting in place of a parent.

"Incapacitated" means a medically verified condition which renders an individual unable to work.

~~"Job Opportunities and Basic Skills Training Program (JOBS)" means the program authorized by Title IV-F of the Social Security Act (42 USC §§681-687). This program provides education, training and work experience to enhance~~

employment opportunities for TANF recipients who are not exempt from participation.

"Job finding" means identification of available jobs.

~~"Job matching" means matching a participant's minimum skills or prior work experience to available job openings.~~

"Job placement" means placing a participant in an unsubsidized or subsidized job. ~~Job placement is the result of job finding and job matching.~~

"Job search" means a structured, time-limited period in which the participant is required to search for employment. ~~To complete the job search, the participant must search and apply for a set number of jobs. The participant must complete a set number of hours searching for employment.~~

"Job skills training" means training in technical job skills or required knowledge in a specific occupational area in the labor market.

"Local agency" or "local department" means any one of the local social services or welfare agencies throughout the Commonwealth which administers the VIP program.

"Minor parent" means any parent under 18 years of age.

"On-the-job training" means training which is provided by an employer during routine performance of a job.

"Parent" means a mother or father, married or unmarried, natural, or adoptive following entry of an interlocutory order. The parent may be a minor parent.

"Participant" means a TANF or TANF-UP recipient who is participating in the VIEW program.

"Participating family" means an assistance unit including a parent who participates in the Virginia Initiative for Employment not Welfare (VIEW) Program.

"Part-time unsubsidized employment" means employment of at least ~~eight~~ 10 hours but less than 30 hours per week and for which no JOBS, VIEW, TANF, or food stamp funds are used to pay the individual's salary.

"Post-secondary education" means formal instruction at an institution of higher education or vocational school leading to the attainment of a certificate, an associate degree, or a baccalaureate degree.

~~"Qualified business employer" means an employer whose business employed not more than 100 employees at the time that the employer first hired a qualified employee.~~

~~"Qualified employee" means an employee who is a Virginia resident and is a recipient of Temporary Assistance for Needy Families (TANF).~~

~~"Qualified employer" means an employer who may participate in the Virginia Targeted Jobs Grant Program by virtue of meeting all of the program criteria for employers.~~

~~"Qualified participant" means a Virginia Initiative for Employment not Welfare participant who meets all of the program criteria and may be hired by a qualified employer.~~

"Recipient" means an individual who is presently receiving a TANF assistance payment or whose eligibility exists even though the assistance payment is zero.

"Recipient family" means an assistance unit in which the caretaker-relative is a parent of the eligible child and the parent's needs may or may not be included on the grant.

"Relative" means spouse, child, grandchild, parent, or sibling of a qualified employer.

"Sanction" means to reduce or suspend a participant's TANF grant or food stamp allotment or both, where applicable, for noncompliance with these regulations or the statute.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth or (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12.

"Support services" means services such as child care or transportation provided to program participants to enable the participant to work or to receive training or education which are intended to lead to employment.

"Temporary Assistance for Needy Families" or "TANF" means the program authorized in §406 of the Social Security Act (42 USC §606) and administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the program authorized in §63.2-602 of the Code of Virginia and administered by the Virginia Department of Social Services, which provides aid to two-parent families with dependent children who are in financial need.

"Time limitations" means a specified period of time, under the statute, to receive TANF.

"Transitional support services" means child care, transportation, medical assistance or employment and training services provided to working participants whose TANF has been terminated either voluntarily, although still eligible for TANF, or involuntarily, due to time limitations.

"Truant" means a child who (i) fails to report to school for three consecutive school days, or for a total of five scheduled school days per month or an aggregate of seven scheduled school days per school calendar quarter, whichever occurs sooner, and no indication has been received by school personnel that the child's parent or guardian is aware of the child's absence, and a reasonable effort by school personnel to

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notify the parent or guardian has failed; or (ii) is not enrolled in school at any time during the month.

"Underemployed" means working at a job for less than the federal hourly minimum wage.

"Unsubsidized employment" means employment in which no government funds are used to subsidize directly the wages earned by a participant.

"Virginia Independence Program" or "VIP" means the program in the Commonwealth of Virginia which is made up of the TANF Program and the Virginia Initiative for Employment not Welfare.

"Virginia Initiative for Employment not Welfare" or "VIEW" means the ~~Job Opportunities and Basic Skills Training Program as implemented in the Commonwealth employment program for TANF recipients.~~

~~"Virginia Targeted Jobs Grant" or "VTJG" means a grant paid to an employer in accordance with §63.1-25.3 of the Code of Virginia.~~

"Work activity" means participation in unsubsidized employment, FEP, part-time work, community work experience, on-the-job training, job search, job readiness, community service, job skills training directly related to employment, satisfactory attendance at secondary school, or in a course of study leading to a certificate of general equivalence.

## Part II Eligibility Requirements

### **22VAC40-35-20. Cooperation in obtaining support.**

A. As a condition of eligibility, each applicant for or recipient of ~~AFDC TANF~~ shall be required to cooperate (unless good cause for refusing to do so is determined to exist in accordance with federal regulations at 45 CFR 232.40 through 232.43). Cooperation shall mean all of the following actions necessary for the identification and location of noncustodial parents and the establishment and collection of child support owed to the person applying for or receiving public assistance:

1. Identifying the parent of a child for whom aid is requested. The applicant or recipient shall provide, under penalty of perjury, the first and last name of the individual against whom paternity or an obligation to provide support is sought to be established, modified, or enforced. If the applicant or recipient is not certain of the child's paternity, he shall identify all individuals with whom the mother had sexual intercourse who may be the father.

2. Providing, under penalty of perjury, additional informational items sufficient to verify the parent's identity including, at a minimum, three of the following: the noncustodial parent's social security number; race; date of birth; place of birth; telephone number; address; schools

attended; occupation; employer; driver's license number; make and model of motor vehicle; motor vehicle license plate number; places of social contact; banking institutions utilized; and names, addresses or telephone number of parents, friends, or relatives.

3. Appearing at an office of the local social services agency or the Division of Child Support Enforcement as necessary to provide verbal or written information or documentary evidence known to, possessed by, or reasonably attainable by the applicant.

4. Appearing as a witness at judicial or administrative hearings or proceedings.

~~5. Providing information, or attesting to the lack of information, under penalty of perjury.~~

~~6. 22VAC40-35-20-A-5 shall be repealed upon receipt of appropriate waiver or other authorization from the federal government.~~

B. If the caretaker-relative is not a parent of the child for whom aid is requested or received, subdivisions A 1 and 2 of this section shall not be required.

C. If the parent is unsure of the identity of the father of the child, she is to name all potential persons who may be the father of the child. The Division of Child Support Enforcement will provide paternity testing for up to five potential fathers at its expense. After five potential fathers have been tested, the parent must assume full responsibility for any additional testing. If the parent fails or refuses to pay for further paternity testing, this will be considered to be noncooperation.

### **22VAC40-35-40. Diversionary assistance program eligibility criteria.**

A. An assistance unit shall be eligible to receive diversionary cash assistance if:

1. Verification is provided to the local department of social services that the assistance unit has a temporary loss of income or delay in starting to receive income resulting in an emergency;

2. The assistance unit meets AFDC requirements specified in ~~§63.1-105~~ §63.2-617 of the Code of Virginia; and

3. The local department of social services determines that diversionary assistance will resolve the emergency.

B. The amount of assistance provided shall be up to the maximum ~~AFDC TANF~~ amount for 120 days that the family would otherwise be eligible to receive. The amount of the payment is based on immediate needs of the applicant. Local agencies shall strive to provide the most cost-effective solution to the one-time emergency.

C. If an assistance unit receives a diversionary assistance payment, all assistance unit members shall be ineligible for

~~AFDC TANF~~ for 1.33 times the number of days for which assistance is granted, beginning with the date that the diversionary assistance is issued.

D. An assistance unit shall be eligible to receive diversionary assistance once in a 60-month period.

E. Receipt of diversionary assistance is voluntary.

F. Local social services agencies shall determine eligibility for diversionary assistance within five working days of the receipt of the final verification that substantiates eligibility, or within ~~45~~ 30 days of the date of the receipt of the signed application, whichever occurs first.

**22VAC40-35-50. School attendance.**

A. The Virginia Department of Social Services shall develop procedures with the Department of Education to receive notification from local school divisions of any student who is truant. If notification is received from another source, the local department shall verify such truancy by contacting the school.

B. When verified by the school of such truancy, the local social services department shall do the following:

1. The local department shall send a written notice to the caretaker-relative advising him that the truant recipient is in jeopardy of losing eligibility for ~~AFDC TANF~~ benefits. The caretaker-relative must contact the local department within five days of the notice to cooperate in developing a plan to achieve compliance with compulsory school attendance laws. The notice must also specify that failure to contact the local department may result in the truant recipient's ineligibility for ~~AFDC TANF~~ due to noncooperation.

2. If the caretaker-relative fails to respond within five days of the notice, the local department shall make a personal contact which may include a direct telephone contact with the caretaker-relative to explain the requirement to develop a plan to return the child to school and the result of not cooperating with the requirement.

3. If the local department is unable to make personal contact, the local department shall mail a written advance notice of proposed action to the caretaker-relative advising that ~~AFDC TANF~~ benefits will be reduced if the caretaker-relative fails to contact the local department to develop a plan to return the child to school.

C. If the local department of social services denies or terminates ~~AFDC TANF~~ for noncompliance, the caretaker-relative shall notify the local department in writing of the truant individual's compliance with this section and file a new application for ~~AFDC TANF~~. The local department shall verify compliance by contacting the school.

**22VAC40-35-60. Minor parent residency requirement.**

A. To be eligible to receive ~~AFDC TANF~~, a minor parent shall reside in the home maintained by his parent or person standing in loco parentis unless he meets the good cause exception outlined in subsection B of this section. The local department shall ensure that the following priority order for the minor parent's living arrangements is considered: in a home maintained by a parent, other adult relative, legal guardian, or other adult determined by the department to be acting in place of a parent.

B. The minor parent residency requirement shall not apply if the local department of social services determines, by clear and convincing evidence, that the physical or emotional health or safety of the minor parent or his dependent child would be jeopardized if the minor parent and dependent lived in the same residence with the minor parent's parent or person standing in loco parentis. Such a claim shall be corroborated by evidence such as court, medical, criminal, child protective services, psychological, or law-enforcement records.

C. The local department of social services shall maintain a list of available housing to be used to refer a minor parent who is in need of an adult-supervised supportive living arrangement. If the local department of social services makes a referral, it will be deemed that the local department has made diligent efforts to locate such housing.

D. As a condition of eligibility, the minor parent shall reside at the local housing to which he is referred by the local department.

**22VAC40-35-70. Limitation on ~~AFDC TANF~~ benefits.**

A. A recipient family is not entitled to an increase in ~~AFDC TANF~~ benefits if the mother of such recipient family gives birth to an additional child during the period of the family's eligibility for financial assistance.

B. Applicants for ~~AFDC TANF~~ financial assistance shall receive notice of the provisions of this section at the time of application. At application or redetermination, such applicant or recipient shall sign a notification acknowledging that they have read and understand the notice.

C. The provisions of this section shall not apply to a child born or adopted during the 10 months following the implementation effective date nor to a child born or adopted during the 10 full calendar months following the month in which the initial assistance check is issued.

D. The provisions of this section shall apply equally to recipient families who adopt a child except that the provision shall be applied using the date of entry of the interlocutory order instead of the child's birthdate.

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## Part III

### Virginia Initiative for Employment Not Welfare (VIEW)

#### **22VAC40-35-80. Participant eligibility.**

~~A. Individuals The following individuals shall be exempt from mandatory participation in VIEW:~~

~~1. Any individual, including all minor caretakers, under 16 years of age;~~

~~2. Any individual at least 16 but no more than 19 years of age who is enrolled full time in elementary or secondary school, including career and technical education programs. The career and technical education program must be equivalent to secondary school. Whenever feasible, such recipients should participate in summer work.~~

~~3. Any individual unable to participate because of a temporary medical condition that prevents entry into employment or training, ~~as determined by a physician, .~~ Such individuals must provide to the local department a written statement from a physician to specify that he is incapacitated, the nature and scope of the incapacity, and the duration of the incapacity. ~~The worker must reevaluate the participant's incapacity at the time prescribed by the medical statement or every 60 days, whichever comes first. The recipient must provide verification that he continues to be incapacitated.~~~~

~~4. Any individual who is receiving Social Security Disability Benefits or Supplemental Security Income.~~

~~B. 5. Any individual who is the sole caregiver of another member of the household who is incapacitated, and whose presence is essential for the care of the other member on a substantially continuous basis, shall be exempt from participation in VIEW. Incapacity is determined by receipt of Social Security Disability Benefits ~~or~~ Supplemental Security Income. ~~The sole other condition under which an individual may be determined incapacitated is by, or~~ a written medical statement from a physician.~~

~~6. Any individual who is age 60 or older.~~

~~C. AFDC recipients who meet an exemption from participation in VIEW may volunteer for the program.~~

~~D. 7. A parent of a child under 12 months of age who personally provides care for the child. A parent of a child not considered part of the TANF public assistance unit due to the provisions listed in §63.2-604 of the Code of Virginia may be granted a temporary exemption of not more than six weeks after the birth of such child.~~

~~E. B. Nonparents who receive TANF shall participate in VIEW if not otherwise exempt.~~

~~F. C. Pregnant women shall participate in VIEW if not otherwise exempt. Pregnant women shall be assigned to job~~

readiness, training, and educational activities during the last trimester of pregnancy.

~~D. TANF recipients who meet an exemption from participation in VIEW may volunteer for the program.~~

#### **22VAC40-35-90. Services.**

A. The participant shall have the primary responsibility to arrange transportation to be employed or participate in activities required by the Agreement of Personal Responsibility. Transportation shall be provided only when the participant is unable to make the necessary arrangements.

~~B. The local department shall provide transitional medical assistance in accordance with the Department of Medical Assistance Services State Plan and regulations.~~

~~C. B. The local departments may provide those services itemized in §63.2-611 B of the Code of Virginia.~~

~~D. C. Transitional employment and training services shall be through the VIEW program to certain individuals.~~

1. Transitional employment and training services can be provided if the following criteria are met:

a. The individual is already employed or the provisions of the employment and training services would allow the individual to become reemployed within 60 days.

b. The activities are designed to maintain employment income, increase employment income or prevent the loss of employment income by the participant.

c. The individual had been enrolled in the VIEW program.

d. The TANF case of which the individual was a member is closed.

e. The case had not been in a VIEW sanction at the time of closure.

f. The individual has not completed an associate degree or four-year degree.

2. The individual can only receive up to 12 months of transitional employment and training services available through the VIEW program.

3. The individual shall enroll in an activity which can be completed within the 12-month time period.

4. An individual can only be enrolled in an activity if approved by a VIEW employment services worker.

5. Individuals may be enrolled only in education and training activities for which there are jobs in the community or jobs are projected to become available in the community.

6. Continued enrollment in education and skills training activities is dependent upon meeting the satisfactory progress requirements for participation in these activities.

a. For education below the post-secondary level (Adult Basic Education and General Equivalency Diploma), the individual must obtain one grade level increase every three months.

b. For certificate and job skills training activities, the participant must meet the satisfactory progress requirements of the institution providing the training.

7. Participants shall not be assigned to FEP (Full Employment Program).

~~E.~~ D. A VIEW participant shall be eligible for a transitional job retention assistance payment of \$50 per month for up to one year after the end of TANF cash assistance. To qualify the participant shall:

1. Be employed at the end of TANF cash assistance;
2. Maintain employment of at least 30 hours per week; and
3. Provide verification of earnings and continued employment of at least 30 hours per week.

**22VAC40-35-100. VIEW activities.**

A. VIEW recognizes that parents have the obligation to support their children through ~~work/employment~~ employment.

B. VIEW shall recognize clearly defined responsibilities and obligations on the part of public assistance recipients. VIEW shall require an Agreement of Personal Responsibility and the obligation to seek and obtain employment. Refusal to sign the Agreement of Personal Responsibility shall result in termination of ~~AFDC and food stamps~~ TANF. The Agreement of Personal Responsibility shall be written for each nonexempt participant specifying, among other applicable requirements, the following:

1. The participant's obligations and responsibilities:
  - a. That it is the participant's responsibility to seek employment to support his own family.
  - b. That it is the participant's responsibility to participate in assignments made by the case manager.
  - c. That it is the participant's responsibility to notify the case manager of any change in the participant's circumstances which would impact the participant's ability to satisfactorily participate in the program.
  - d. That it is the participant's responsibility to accept offers of suitable employment. Refusal to accept offers of suitable employment will result in the loss of the participant household's ~~AFDC and food stamps~~. ~~Loss of food stamps for refusal to accept offers of suitable~~

~~employment will result in the entire household's food stamp allotment being terminated when the participant is the head of household. If the participant is not the head of the household, only the participant's prorata share shall be removed from the allotment~~ TANF.

e. That it is the participant's responsibility to arrange and find transportation and day care. The agency will provide for transportation and day care, to the extent funding is available, only when the participant is unable to make his own arrangements.

2. Explanation of the two-year time limit.

C. Modification of the Agreement of Personal Responsibility shall not impact or change the two-year time limit for receipt of ~~AFDC~~ TANF benefits.

D. A VIEW participant who does not meet an exemption shall be required to participate in a work activity. The department shall ensure that participants are assigned to one of the following employment categories ~~not less than 90 days after AFDC~~ TANF eligibility determination and entry into the VIEW program:

1. Unsubsidized private sector employment (full-time, part-time or temporary) is the preferred employment category. A participant shall be required to accept any offers of suitable employment as defined in §60.2-618 of the Virginia Unemployment Compensation Act.
2. Subsidized employment as follows:
  - a. The department shall conduct a work activity which shall be known as the Full Employment Program (FEP), which shall replace ~~AFDC and food stamp~~ TANF benefits with subsidized employment.
  - b. The local department, employer and the full employment participant shall sign a written agreement. At the expiration of this full employment agreement or when the participant leaves FEP, he will be reassessed and a modified Activity and Service Plan will be developed to reassign the participant to an appropriate employment category.
  - c. The employer is reimbursed for the wages paid to the participant up to the ~~combined~~ value of the participant's ~~AFDC and food stamps~~ TANF benefits as contained in the agreement signed between the department and the employer.
    - (1) The employer subsidy will be based on the actual hours the participant works.
    - (2) The value of the participant's ~~AFDC and food stamp~~ TANF benefits will be based on the benefits received over the period of assignment to a Full Employment Program placement.
3. Community work experience.

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a. The participant can be placed into community work experience. Job placements shall serve a useful public purpose as provided in §482 (f) of the Social Security Act (42 USC §682 F).

b. The department and local departments shall work with other state, regional, and local agencies and governments in developing job placements. Placements shall be selected to provide skills that will make the participant more employable and serve a public function. Participation in community work experience shall be for an initial period of six months. Program participants shall not displace regular workers.

c. At the expiration of the community work experience assignment or when the participant leaves community work experience, he will be reassessed and a modified Activity and Service Plan will be developed to reassign the participant to an appropriate employment category.

d. There shall be no sick leave benefit attached to this component since participants work in exchange for their AFDC TANF and food stamp benefits. Participants who are ill or incapacitated will continue to receive their benefits.

4. In order to be considered a work activity in VIEW, on-the-job training must be provided by an employer. This is typically employer-required unpaid training by an employer which must be completed before an individual will be hired.

E. Other VIEW activities include:

1. Education.

a. Education may only be provided in conjunction with work-related activities during the participant's two-year time period.

(1) ~~Only eight Assigned~~ hours per week of community work experience hours can be ~~provided~~ substituted for educational activities during the participant's initial six-month placement in community work experience as long as the participant is engaged in community work experience for at least 20 hours per week. After six months of participation in community work experience, the number of hours required in the work activity can be reduced to allow participation in education to further the participant's employability.

(2) Participants who enroll into education or training programs prior to coming in VIEW shall be required to meet the requirements of the program.

b. Post-secondary education. Participants assigned to post-secondary education should have demonstrated the capability to successfully complete the educational activity in the prescribed time period in an occupational area for which there is demand in the community.

2. Job skills training may only be provided in conjunction with work-related activities during the participant's two-year time period. The choice of occupational skills training offered will vary in each jurisdiction depending upon local labor market conditions. However, skills training must be related to the types of jobs which are available or are likely to become available in the community.

3. Job search and job readiness.

4. Community service.

5. Vocational education.

## **22VAC40-35-110. Sanctions.**

Local departments of social services shall be authorized to sanction participants in the ~~Food Stamp Program as allowed pursuant to 7 CFR 273.7(g) and in the AFDC TANF Program~~ up to the full amount of the AFDC TANF grant for noncompliance, without good cause as defined by the JOBS State Plan, as follows:

1. A participant assigned to the Full Employment Program who does not work the required hours will only be paid for the actual hours worked. Participants that are terminated from FEP by the employer due to problems with attendance or performance or both will be sanctioned the full amount of the ~~AFDC and food stamp benefits~~ TANF grant.

2. A recipient assigned to VIEW who is determined to be in noncompliance with the VIEW Program shall be sanctioned as follows:

a. For the first offense, the full amount of AFDC TANF benefits for the family shall be suspended for at least one calendar month or until the individual complies with the program requirements, whichever is longer.

b. For the second offense, the full amount of AFDC TANF benefits for the family shall be suspended for at least three calendar months or until the individual complies with the program requirements, whichever is longer.

c. For the third or subsequent offenses, the full amount of AFDC TANF benefits for the family shall be suspended for at least six calendar months or until the individual complies with the program requirements, whichever is longer.

## **22VAC40-35-120. Hardship exceptions.**

A. In certain circumstances, hardship exceptions may be made to the time limitations for receipt of AFDC TANF benefits. A request for a hardship exception may be made by an individual who is either a current VIEW participant in the 60-day period prior to the closure of the TANF case due to the receipt of 24 months of TANF benefits or a former VIEW participant in the period of ineligibility following the receipt

of 24 months of TANF benefits. If the participant requests a hardship exception, the local department shall make an evaluation of participation while in VIEW and, if applicable, the period of ineligibility after VIEW participation. This evaluation will determine if a hardship exception may be granted to allow the participant to continue receiving AFDC TANF and to continue to participate in VIEW after the receipt of 24 months of TANF benefits. Once a participant has exhausted the time limit extended to him under a hardship exception, he may not apply for another extension based upon the same hardship.

A participant is not eligible for a hardship exception unless he has complied with the requirements of the program, which are satisfactory participation in assigned program activities, not having been sanctioned more than once during the two-year period for failing to comply with the requirements of the program, and not leaving a job, without good cause as defined by the JOBS State Plan, at any time during the program. Former participants will not be eligible for a hardship exception unless the individual has complied with the requirements of the program while in VIEW and has not lost employment as a result of factors unrelated to his job performance since entering the period of ineligibility. Factors unrelated to job performance are defined as those situations in which the Virginia Employment Commission would determine that the individual would be eligible for unemployment compensation if the participant had worked sufficient hours to qualify.

B. If the above criteria are met, a hardship exception may be granted by the local agency for up to one year if one of the following conditions exists:

1. If the unemployment rate in the participant's locality for the two most recent quarters for which data is available from the Virginia Employment Commission prior to the individual's two-year time limit elapsed request for a hardship exception was 10% or greater. In order to qualify for this exception the participant must also be actively seeking employment as defined in §60.2-612 of the Code of Virginia.

2. If extension of benefits for up to one year will enable a participant to complete employment-related education or training and the participant had been making satisfactory progress per program requirements.

Participants granted a hardship exception under this subsection shall be reevaluated at least every 90 days to determine if a basis for the hardship exception continues to exist. If a hardship exception is granted, the participant must continue to participate in the program and work activities.

C. A hardship exception shall be granted, if the local department determines that the participant meets all criteria, for up to 90 days if the following conditions exist:

1. If the participant has been actively seeking employment by engaging in job-seeking activities required pursuant to §60.2-612 of the Code of Virginia and is unable to find employment that would, in combination with any other income sources of assistance that the individual is receiving, pay an amount equal to or exceeding the case's AFDC TANF cash benefits and standard work deduction. The local department may extend benefits for up to ~~three months~~ 90 days to allow the participant to find employment.

2. If the program participant loses his job as a result of factors unrelated to his job performance. Factors unrelated to job performance are defined as those situations in which the Virginia Employment Commission would determine that the individual would be eligible for unemployment compensation if the participant had worked sufficient hours to qualify. The local department may extend benefits for up to ~~three months~~ 90 days to allow the participant to find employment.

Extensions of hardship exceptions will be granted in this subsection in very limited circumstances and only to those persons who demonstrate an extreme hardship. The local department shall refer the case to ~~a panel composed of the Commissioner of the Virginia Department of Social Services, the Commissioner of the Virginia Employment Commission, and the Executive Director of the Governor's Employment and Training Department or designee.~~ The panel commissioner or designee shall evaluate each request individually and grant or deny the request for an extension. The panel commissioner or designee will reevaluate the individual's case as it determines necessary, but at least every 90 days, in order to determine whether the conditions justifying the exception continue to exist.

**~~22VAC40-35-125. The Virginia Targeted Jobs Grant Program. (Repealed.)~~**

~~A. In order to enhance the employment opportunities of participants, the VIEW program shall administer a grant program called the Virginia Targeted Jobs Grant Program (VTJG).~~

~~1. The Virginia Targeted Jobs Grant Program shall pay a grant not to exceed \$1,000 to participating qualified employers. For the purpose of this section, a qualified employer may not claim a grant if the qualified employee was employed within one year of the date of the current hiring.~~

~~2. Participating employers shall sign an agreement with the Virginia Department of Social Services which will outline the program requirements for both the employer and the Commonwealth.~~

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B. In order to be a qualified employee, the individual must have been a recipient of TANF for at least nine months prior to hiring.

1. The employee must be unemployed or underemployed at the time he is hired by the employer.
2. The employee shall not be a relative of the hiring authority. For the purpose of this section, a relative means a spouse, child, grandchild, parent or sibling of the employer.
3. The employee must have worked for the employer for at least 1,000 hours during the taxable year.
4. The employee must have been placed with the employer as a result of his participation in the Department of Social Services' VIEW Program.

C. In order to make application for the Virginia Targeted Jobs Grant Program grant, a participating employer shall complete the application form supplied by the Department of Social Services. The application form shall be submitted to the Virginia Department of Social Services, Division of Financial Management with certification of the participant's employment for the period in question. The application must be filed no later than the last day of the third month following the close of the taxable year for which the grant is claimed. Grants will be awarded by May 30 of each year. If funds are not sufficient to cover the cost of the VTJGs to which each employer is entitled, each employer will be authorized a credit proportionate to his share of the available funding. Grants for applications received after April 15 will not be awarded until the following fiscal year. A VTJG Certification of Participant Placement must accompany the application.

D. The Commissioner of the Department of Social Services, or his designee, may examine the books, records, and other applicable documents to determine that the employer has satisfied the above requirements and is eligible for a VTJG.

## Part IV Employer Tax Credit

### 22VAC40-35-126. Employer eligibility. (Repealed.)

A. For taxable years beginning on and after January 1, 1999, a qualified business employer shall be allowed a credit imposed against taxes imposed by Articles 2 (§58.1-320 et seq.), 6 (§58.1-360 et seq.), and 10 (§58.1-400 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia in an amount equal to 5.0% of the annual salary paid during the taxable year to a qualified employee; however, in no case shall the credit exceed \$750 per qualified employee.

B. For the purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or

members, respectively, in proportion to their ownership or interest in such business.

C. Any credit not usable for a taxable year may be carried over to the next three taxable years. The amount of any credit allowed shall not exceed the tax imposed for the taxable year. A credit may not be carried back to a prior taxable year. If a qualified business that is subject to the tax limitation is allowed another credit under another provision of the Code of Virginia, or has a credit carryover from a preceding taxable year, such employer must first utilize any credit which does not have a carry-over provision, and then any credit which is carried forward from a prior taxable year, prior to using a credit allowed under this section.

D. The amount of tax credits available, when added to the amount of grants made to employers under the Virginia Targeted Jobs Grant Program for the fiscal year, shall not exceed the amount appropriated to the Virginia Targeted Jobs Grant Fund as provided in the general appropriation act.

E. No qualified business employer shall be eligible to claim a credit for any taxable year that the employer is the recipient of a grant for the same qualified employee under the Virginia Targeted Jobs Grant Program.

## Part V

### Procedures for Claiming a Virginia Targeted Jobs Grant or Employer Tax Credit

### 22VAC40-35-127. Procedures for claiming a Virginia Targeted Jobs Grant. (Repealed.)

A. No later than three months following the close of a taxable year, but no later than April 15 of each year, any employer who hires a qualified employee during the taxable year must submit an application for a Virginia Targeted Jobs Grant (VTJG) to the Virginia Department of Social Services, Division of Financial Management, pursuant to 22VAC40-35-125.

B. The employer will include on the application:

1. The taxable year for which the qualified employee was hired;
2. The employee name and SSN;
3. The date the qualified employee was hired;
4. Total wages paid to the qualified employee during the taxable year;
5. Total hours worked by the employee during the taxable year;
6. The employer federal ID number;
7. A statement that the qualified employee was not previously employed by the employer within 12 months of the date the qualified employee was hired; and

8. A certification that the employee is not a relative and has worked for more than 1,000 hours at a rate of pay which is at least the minimum wage during the taxable year for which the employer is claiming the VTJG.

C. By May 15 of each year the total amount of VTJGs will be calculated and grants will be issued by the DSS in accordance with 22VAC40-35-125 C.

D. Unused balances for a fiscal year will be issued to qualifying employers as an employer tax credit.

**22VAC40-35-128. Procedures for claiming an employer tax credit. (Repealed.)**

A. By April 15 of each year, any qualified business employer who hires a qualified employee during a taxable year beginning on or after January 1, 1999, must submit a Virginia Employer Tax Credit Application Form to the Virginia Department of Social Services, Division of Financial Management.

B. The request will include:

1. A certification that the company meets the definition of a qualified business employer as defined in §58.1-439.9 of the Code of Virginia;
2. The employee name and SSN;
3. The taxable year for which the qualified employee was hired;
4. The date the qualified employee was hired;
5. Total wages paid to the qualified employee during the taxable year;
6. Total hours worked by the employee during the taxable year; and
7. The employer federal ID number.

C. After the department calculates and issues VTJG payments, the unexpended VTJG appropriation, as set forth in 22VAC40-35-127 D, will be used to determine each qualified employer's entitlement to a employer tax credit. Based upon the number of employer tax credit requests received and the balance of VTJG funds, the department will determine the maximum employer tax credits (MTC) allowed, not to exceed \$750 per qualified employee. If funds are not sufficient to cover the cost of the MTC to which each employer is entitled, each employer will be authorized a credit proportionate to his share of the available funding. The department will notify each qualified employer of the employer tax credit allowable for the taxable year which will be the MTC or a lesser amount based upon wages paid or maximum funding available. By June 15 of each year, the department will issue certifications of allowable employer tax credits to each qualified employer. The employer may amend their tax return for the taxable year

for which the credit was earned or may apply the credit to a future year pursuant to §58.1-439.9 of the Code of Virginia.

D. The department will notify the Virginia Department of Planning and Budget of the combined VTJG issued and MTC certified in the fiscal year by June 30 of each year.

Part VI ~~IV~~  
Appeals

**22VAC40-35-130. Appeals process.**

A participant aggrieved by the decision of a local board granting, denying, changing, or discontinuing assistance may appeal such decision pursuant to §63.1-116 §63.2-517 of the Code of Virginia. A participant cannot appeal the provisions of the Agreement of Personal Responsibility which was mutually developed by the participant and the local agency.

**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

[View Agreement of Personal Responsibility.](#)

[View Activity and Service Plan.](#)

[View Full Employment Agreement.](#)

[Virginia Employer Tax Credit Application Form.](#)

VA.R. Doc. No. R07-732; Filed September 23, 2008, 1:39 p.m.

**STATE BOARD OF SOCIAL SERVICES**

**Fast-Track Regulation**

**Title of Regulation:** 22VAC40-151. Standards for Licensed Children's Residential Facilities (adding 22VAC40-151-10 through 22VAC40-151-1020).

**Statutory Authority:** §§63.2-217 and 63.2-1737 of the Code of Virginia.

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

**Public Comments:** Public comments may be submitted until November 12, 2008.

**Effective Date:** January 1, 2009.

**Agency Contact:** Joni S. Baldwin, M.Ed., Program Development Consultant, Department of Social Services, 7 North Eighth Street, Richmond, VA 23231, telephone (804) 726-7162, FAX (804) 726-7132, or email [joni.baldwin@dss.virginia.gov](mailto:joni.baldwin@dss.virginia.gov).

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**Basis:** The following sections of the Code of Virginia are the sources of legal authority to promulgate the regulation: §63.2-217 (mandatory) states that the State Board of Social Services shall adopt regulations as may be necessary or desirable to carry out the purpose of Title 63.2. Chapter 873 of the 2008 Acts of Assembly and §63.2-1737 (mandatory) states that the board shall adopt regulations establishing the Department of Social Services as the single licensing agency for the regulation of children's residential facilities, including group homes, that provide social services programs.

**Purpose:** The proposed regulation is required as a result of the passage of Chapter 873 of the 2008 Acts of Assembly, legislation that dissolves the interdepartmental model for the regulation of children's residential facilities and creates the department as the single licensing agency for regulation and licensure of children's residential facilities and group homes that provide social services programs. This regulation applies only to the department. All references therefore regarding interdepartmental regulation and the Departments of Juvenile Justice Services and Mental Health, Mental Retardation and Substance Abuse Services have been removed. This proposed regulation comports with the General Procedures and Information for Licensure, 22VAC40-80, and it is essential to protecting the health, safety and welfare of children placed in children's residential facilities in Virginia.

**Rationale for Using Fast-Track Process:** The fast-track process is being used because Chapter 873 of the 2008 Acts of Assembly and §63.2-1737 mandate the board to promulgate regulations to implement these provisions no later than October 31, 2009.

The agency expects this rulemaking to be noncontroversial because the department involved providers of licensed children's residential facilities, provider associations and other interested state agencies in the development of the proposed changes and there appears to be agreement regarding the revisions.

The following persons serve on the Children's Residential Facility Advisory Committee and were involved in the revision process: Martha Stone, licensed provider Harvest Child Care Ministries, representing the Virginia Association of Children's Homes; Cindi McGirt, licensed provider New Beginnings, representing mother/baby programs; Dave Ottinger, licensed provider New Dominion School, representing wilderness and adventure activities facilities; Chris Schultz, licensed provider Virginia Home for Boys and Girls, representing larger campus style programs; Brady Nemeyer, representing the Office of Comprehensive Services; Sandra Ruffin, representing the Virginia Department of Education; Robin Ely, Licensing Administrator for children's residential facilities, Virginia Department of Social Services; Stacey Cook, licensed provider Destiny's Fulfilled, representing group homes under eight persons; Terri Stott, licensed provider Prince William County, representing

publicly operated facilities; Travis Baisden, licensed provider Elk Hill, representing independent living programs; Mark Stevens, Virginia Office for Protection and Advocacy; Douglas Newsome, Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services; Letha Moore-Jones, representing independent living, Division of Family Services, Virginia Department of Social Services; Leslie Knachel, Program Manager of Program Development Unit and Acting-Division Director, Division of Licensing Programs, Virginia Department of Social Services; Jeff Williams, Program Development Consultant, Division of Licensing, Virginia Department of Social Services; and Joni Baldwin, Program Development Consultant, Division of Licensing, Virginia Department of Social Services. The department contacted the Virginia Association of Independent Special Education Facilities and the Virginia Coalition of Private Providers Association with a request for each organization to appoint someone to serve on the committee. They did not respond.

**Substance:** This proposed regulation is a new regulation. It abolishes the interdepartmental model for the regulation of children's residential facilities. In place of the interdepartmental model, it established the department as the single licensing agency for regulation and licensure of children's residential facilities and group homes that provide social services programs.

The basis for this regulation is the current Standards for Regulation of Interdepartmental Regulation of Children's Residential Facilities, 22VAC42-11. This proposed regulation incorporates the existing standards but removes all references regarding interdepartmental regulation and the Departments of Juvenile Justice Services and Mental Health, Mental Retardation and Substance Abuse Services. This proposed regulation comports with the General Procedures and Information for Licensure, 22VAC40-80.

This regulation does not contain any substantive change from current practice.

**Issues:** The advantage of this proposed regulation is to provide for the protection of children. The proposed regulation defines for the public and providers of children's residential care, the requirements necessary to ensure the health, safety and well-being of children.

There are no known disadvantages to the public, individual private citizens or the Commonwealth. A disadvantage to some group home businesses currently licensed by the Departments of Education or Mental Health, Mental Retardation and Substance Abuse Services is that, effective July 1, 2008, some of these businesses may be required to change their regulatory agency because they are under the purview of the department. The legislation requires programs providing social services to be under the regulatory purview of the department.

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

Summary of the Proposed Amendments to Regulation. Chapter 873 of the 2008 Acts of the Assembly dissolves the interdepartmental model for regulation of licensure of children's residential facilities and directs each affected agency to promulgate separate regulations for facilities they license. Pursuant to this legislative action, the Board of Social Services (Board) proposes to promulgate Standards for Licensed Children's Residential Facilities. These proposed regulations eliminate references to other agencies and to interdepartmental regulations that currently set standards for facilities. Interdepartmental Regulations for Licensed Children's Residential Facilities will be repealed in a separate, exempt, action.

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

Estimated Economic Impact. Currently, children's residential facilities can be licensed by one of several different agencies, depending on the population that they serve. As a consequence, the agencies involved, the Department of Social Service (DSS), the Department of Juvenile Justice (DJJ) and the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) jointly promulgated and maintained regulations to set standards for licensure of facilities.

Pursuant to legislation passed in the last legislative session, which dissolved the interdepartmental model for regulating licensure of children's residential facilities, the Board proposes to promulgate replacement regulations. These new regulations do not vary from current regulations, and practice, in any substantive way. Language that references the soon to be repealed interdepartmental regulations, as well as references to DJJ and DMHMRSAS, have been removed from the regulatory text. Because the Board is not imposing any new obligations on affected facilities, regulated entities will not incur any additional costs on account of this regulatory action. To the extent that promulgating new regulations, and repealing current regulations, eliminates now obsolete regulatory language, regulated entities will benefit from additional regulatory clarity.

Businesses and Entities Affected. DSS reports that it currently licenses 107 children's residential facilities. All of these facilities will be affected by this regulatory action.

Localities Particularly Affected. No locality will be particularly 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. DSS reports that all affected entities qualify as small businesses. None of these entities are likely 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 Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

## Summary:

*Chapter 873 of the 2008 Acts of the Assembly dissolves the interdepartmental model for regulation of licensure of children's residential facilities and directs each affected agency to promulgate separate regulations for facilities they license. Pursuant to this legislative action, the State Board of Social Services proposes to promulgate Standards for Licensed Children's Residential Facilities. This regulation incorporates the existing standards, but eliminates references to other agencies and to interdepartmental regulations that currently set standards*

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*for facilities. Interdepartmental Regulations for Licensed Children's Residential Facilities (22VAC42-11) will be repealed in a separate regulatory action.*

## CHAPTER 151 STANDARDS FOR LICENSED CHILDREN'S RESIDENTIAL FACILITIES

### 22VAC40-151-10. Definitions.

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

"Allegation" means an accusation that a facility is operating without a license or receiving public funds for services it is not certified to provide.

"Allowable variance" means temporary or permanent waiver of compliance with a standard or portion of a standard, or permission to meet the intent of the standard by a method other than that specified in the standard, when the regulatory authority, in its sole discretion, determines (i) enforcement will create an undue hardship and (ii) resident care will not be adversely affected.

"Annual" means within 13 months of the previous event or occurrence.

"Applicable state regulation" means any regulation that the promulgating state agency determines applies to the facility. The term includes, but is not necessarily limited to, modules, standards, and other regulations promulgated by the Departments of Education; Health; Housing and Community Development; Social Services; or other state agencies.

"Applicant" means the person, corporation, partnership, association, limited liability company or public agency that has applied for a license or certificate.

"Aversive stimuli" means physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity that when applied to a resident, are noxious or painful to the individual, but in no case shall the term "aversive stimuli" include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident.

"Behavior support" means those principles and methods employed by a provider to help a child achieve positive behavior and to address and correct a child's inappropriate behavior in a constructive and safe manner in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security, and the child's service plan.

"Behavior support assessment" means identification of a resident's behavior triggers, successful intervention strategies, anger and anxiety management options for calming, techniques for self-management, and specific goals that

address the targeted behaviors that lead to emergency safety interventions.

"Body cavity search" means any examination of a resident's rectal or vaginal cavities, except the performance of medical procedures by medical personnel.

"Case record" or "record" means up-to-date written or electronic information relating to one resident. This information includes social data, agreements, all correspondence relating to care of the resident, service plans with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

"Child" means any person legally defined as a child under state law. The term includes residents and other children coming in contact with the resident or facility (e.g., visitors). When the term is used, the requirement applies to every child at the facility regardless of whether the child has been admitted to the facility for care (e.g., staff/child ratios apply to all children present even though some may not be residents).

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to §63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§63.2-900, 63.2-903 and 63.2-1221 of the Code of Virginia.

"Children's residential facility" or "facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;
2. An establishment required to be licensed as a summer camp by §35.1-18 of the Code of Virginia;
3. A licensed or accredited hospital legally maintained as such; and
4. Any facility licensed by the Department of Social Services as a child caring institution as of January 1, 1987, and that receives no public funds.

"Complaint" means an accusation against a licensed or certified facility regarding an alleged violation of standards or law.

"Contraband" means any item prohibited by law or by the rules and regulations of the agency, or any item that conflicts

with the program or safety and security of the facility or individual residents.

"Corporal punishment" means punishment administered through the intentional inflicting of pain or discomfort to the body through actions such as, but not limited to (i) striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort.

"Corrective action plan" means violations documented by the department and the facility's submitted pledged corrective action to the documented violations cited by the regulatory authority.

"Day" means calendar day unless the context clearly indicates otherwise.

"Department" means the State Department of Social Services.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off for permanent staff or other situations that should reasonably be anticipated.

"Emergency admission" means the sudden, unplanned, unexpected admittance of a child who needs immediate care except self-admittance to a temporary emergency shelter facility or a court-ordered placement.

"Goal" means expected results or conditions that usually involve a long period of time and that are written in behavioral terms in a statement of relatively broad scope. Goals provide guidance in establishing specific short-term objectives directed toward the attainment of the goal.

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual maintains business or professional, family and community relationships that are characterized by honesty, fairness, truthfulness, and dependability, and has a history or pattern of behavior that demonstrates that the individual is suitable and able to care for, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group home" means a children's residential facility that is a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12 residents.

"Health record" means the file maintained by a provider that contains personal health information.

"Human research" means any systematic investigation including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

"Immediately" means directly without delay.

"Independent living program" means a competency-based program that is specifically approved by the department to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.

"Independent living services" means those services and activities designed to assist in self-sufficiency preparation of children aged 14 and older or individuals who have turned 18 but not yet turned 21 years old. Such services shall include but not be limited to counseling, education, housing, employment, and money management, skills development and access to essential documents and other appropriate services.

"Individualized service plan" means a written plan of action developed, and modified at intervals, to meet the needs of a specific resident. It specifies measurable short and long-term goals, objectives, strategies and time frames for reaching the goals and the individuals responsible for carrying out the plan.

"Legal guardian" means the natural or adoptive parents or other person, agency, or institution that has legal custody of a child.

"License" means a document verifying approval to operate a children's residential facility and that indicates the status of the facility regarding compliance with applicable state regulations.

"Live-in staff" means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

"Living unit" means the space in which a particular group of children in care of a residential facility reside. A living unit contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents of the unit. Depending upon its design, a building may contain one living unit or several separate living units.

"Mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of a person's body as a means to control his physical activities when the individual receiving services does not have the ability to remove the device.

"Medication error" means an error made in administering a medication to a resident including the following: (i) the

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wrong medication is given to a resident; (ii) the wrong resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to a resident. A medication error does not include a resident's refusal of offered medication.

"Objective" means expected short-term results or conditions that must be met in order to attain a goal. Objectives are stated in measurable, behavioral terms and have a specified time for achievement.

"On duty" means that period of time during which a staff person is responsible for the supervision of one or more children.

"Parent" means a natural or adoptive parent. "Parent" means either parent unless the facility has been provided documentation that there is a legally binding instrument, a state law or a court order governing such matters as divorce, separation, or custody, that provides to the contrary.

"Pat down" means a thorough external body search of a clothed resident.

"Personal health information" means the information that encompasses the universe of oral, written or otherwise recorded information that is created or received by an entity relating to either an individual's physical or mental health or the provision of or payment for health care to an individual.

"Pharmacological restraint" means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when the individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

"Physical restraint" (also referred to as a "manual hold") means use of a physical intervention or "hands-on" hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Placement" means an activity by any person that provides assistance to a parent or legal guardian in locating and effecting the movement of a child to a foster home, adoptive home, or children's residential facility.

"Premises" means the tracts of land on which any part of a residential facility for children is located and any buildings on such tracts of land.

"Provider" or "licensee" or "sponsor" means the person, corporation, partnership, association, or public agency to whom a license is issued and who is legally responsible for compliance with the regulatory and statutory requirements relating to the facility.

"Resident" means a person admitted to a children's residential facility for supervision, care, or training on a 24-hour per day basis.

"Rest day" means a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the facility.

"Routine admission" means the admittance of a child following evaluation of an application for admission and execution of a written placement agreement.

"Rules of conduct" means a listing of a facility's rules or regulations that is maintained to inform residents and others about behaviors that are not permitted and the consequences applied when the behaviors occur.

"Sanitizing agent" means any substance approved by the Environmental Protection Agency to destroy bacteria.

"Seclusion" means the involuntary placement of an individual alone, in an area secured by a door that is locked or held shut by a staff person by physically blocking the door or by any other physical or verbal means so that the individual cannot leave it.

"Self-admission" means the admittance of a child who seeks admission to a temporary emergency shelter facility as permitted by Virginia statutory law without completing the requirements for "routine admission."

"Severe weather" means extreme environment or climate conditions that pose a threat to the health, safety, or welfare of residents.

"Standard" means a statement that describes in measurable terms a required minimum performance level. The term standard and the term regulation may be used interchangeably.

"Strategies" means a series of steps and methods used to meet goals and objectives.

"Strip search" means a visual inspection of the body of a resident when that resident's outer clothing or total clothing is removed and an inspection of the removed clothing. Strip searches are conducted for the detection of contraband.

"Structured program of care" means a comprehensive planned daily routine including appropriate supervision that meets the needs of each resident both individually and as a group.

"Student/intern" means an individual who simultaneously is affiliated with an educational institution and a residential facility. Every student/intern who is not an employee is either a volunteer or contractual service provider depending upon the relationship among the student/intern, educational institution, and facility.

"Substantial compliance" means that while there may be noncompliance with one or more standards that represents minimal risk, compliance clearly and obviously exists with most of the standards as a whole.

"Target population" means individuals with a similar, specified characteristic or disability.

"Temporary contract worker" means an individual who is not a direct salaried employee of the provider but is employed by a third party and is not a consistently scheduled staff member.

"Temporary emergency shelter facility" means an emergency shelter specifically approved to provide a range of services, as needed, on an individual basis not to exceed 90 days, except that this term does not include secure detention facilities.

"Therapy" means provision of direct diagnostic, preventive and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

"Time out" means the involuntary removal of a resident by a staff person from a source of reinforcement to a different open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteers" means any individual or group who of their own free will, and without any financial gain, provides goods and services to the program without compensation.

"Wilderness program" means a facility specifically approved to provide a primitive camping program with a nonpunitive environment and an experience curriculum for residents nine years of age and older who cannot presently function in home, school, or community. In lieu of or in addition to dormitories, cabins or barracks for housing residents, primitive campsites are used to integrate learning, mentoring, and group process with real living needs and problems for which the resident can develop a sense of social responsibility and self worth.

## **22VAC40-151-20. Investigation.**

The department will arrange and conduct an on-site inspection of the facility, a thorough review of the activities and services, and an investigation of the financial responsibility, character, and reputation of the applicant.

## **22VAC40-151-30. Inspection of facilities.**

A. Representatives of the department shall make announced and unannounced inspections during the effective dates of the license. The purpose of these inspections is to monitor compliance with applicable standards.

B. The department shall notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in children's residential facilities when such violations result in the lowering of the license or certificate to provisional status.

## **22VAC40-151-40. Posting of information.**

A. Information concerning the application for initial licensure of children's residential facilities shall be posted by locality on the department's website.

B. An accurate listing of all licensed facilities including information on renewal, denial, or provisional licensure, and services shall be posted by locality on the department's website.

## **22VAC40-151-50. General requirements.**

A. The provider shall demonstrate substantial compliance with these standards to demonstrate that its program and physical plant provide reasonably safe and adequate care while approved plans of action to correct findings of noncompliance are being implemented and there are no noncompliances that pose an immediate and direct danger to residents.

B. Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law.

C. Each provider shall self-report within 10 days, to the department, lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges against staff that may have been made relating to the health and safety or human rights of residents.

D. The provider shall comply with all other applicable federal, state, or local laws and regulations.

E. The provider's current policy and procedure manual shall be readily accessible to all staff.

F. The provider shall comply with its own policies and procedures.

## **22VAC40-151-60. Application fees.**

A. There shall be a \$500 nonrefundable initial application fee. If the application is closed, denied, or withdrawn all subsequent initial applications shall require another \$500 fee.

B. There shall be a \$100 nonrefundable renewal application fee.

C. A renewal fee shall not be charged to providers directly following the issuance of a conditional license.

D. The application fee shall not apply to state or locally owned, operated, or contracted facilities.

E. Application fees shall be used for the development and delivery of training for operators and staff of children's residential facilities.

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## **22VAC40-151-70. Modification.**

A. A contemplated change in operation that would affect the terms of the license shall not be implemented prior to approval by the department. The provider will be notified in writing within 60 days following receipt of the request as to whether the modification is approved or a new license is required.

B. The department may modify the term of a facility's license at any time during the licensure period based on a change in the facility's compliance with these standards and other applicable statutes and regulations.

## **22VAC40-151-80. Revocation.**

A. A license may be revoked when the provider:

1. Violates any provision of applicable laws or regulations;
2. Engages in conduct or practices that are in violation of statutes related to abuse or neglect of children;
3. Deviates significantly from the program or services for which a license was issued without obtaining prior written approval from the department or fails to correct such deviations within the specified time; or
4. Engages in a willful action or gross negligence that jeopardizes the care or protection of residents.

B. If revocation of a license is recommended, the facility shall be notified in writing of the noncompliances, the proposed action, the right to appeal, and the appeal process.

## **22VAC40-151-90. Summary suspension.**

A. In conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents, the commissioner may issue an order of summary suspension of the license to operate a children's residential facility when he believes the operation of the facility should be suspended during the pendency of such proceeding.

B. Prior to the issuance of an order of summary suspension, the department shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The department shall schedule the time, date, and location of the administrative hearing with the hearing officer.

C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the facility as soon as practicable. The order shall set forth:

1. The time, date, and location of the hearing;
2. The procedures for the hearing;
3. The hearing and appeal rights; and

4. Facts and evidence that formed the basis for the order of summary suspension.

D. The hearing shall take place within three business days of the issuance of the order of summary suspension.

E. The department shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

F. The administrative hearing officer shall provide written findings and conclusions, together with a recommendation as to whether the license or certificate should be summarily suspended, to the commissioner within five business days of the hearing.

G. The commissioner shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer.

H. The commissioner shall issue and serve on the children's residential facility or its designee by personal service or by certified mail, return receipt requested, either:

1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendations and (ii) notice that the children's residential facility may appeal the commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order; or

2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.

I. The facility may appeal the commissioner's decision on the summary suspension to the appropriate circuit court no more than 10 days after issuance of the final order.

J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.

K. At the time of the issuance of the order of summary suspension, the department shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that parents and guardians are informed of the pending action.

## **22VAC40-151-100. Allowable variances.**

A. Any request for an allowable variance shall be submitted in writing to the department and shall include all required elements specified in the General Procedures and Information for Licensure (22VAC40-80).

B. An allowable variance shall not be implemented prior to approval of the department.

**22VAC40-151-110. Governing body.**

A. The provider shall clearly identify the corporation, association, partnership, individual, limited liability company or public entity that is the licensee.

B. The provider shall clearly identify any governing board, body, entity or person to whom it delegates the legal responsibilities and duties of the provider.

**22VAC40-151-120. Responsibilities of the provider.**

A. The provider shall appoint a qualified chief administrative officer to whom it delegates, in writing, the authority and responsibility for administrative direction of the facility.

B. The provider shall develop and implement a written decisionmaking plan that shall provide for a staff person with the qualifications of the chief administrative officer or program director to be designated to assume the temporary responsibility for the operation of the facility. Each plan shall include an organizational chart.

C. The provider shall develop a written statement of the objectives of the facility including a description of the target population and the programs to be offered.

D. The provider shall develop and implement written policies and procedures to monitor and evaluate service quality and effectiveness on a systematic and on-going basis. The provider shall implement improvements when indicated.

**22VAC40-151-130. Fiscal accountability.**

A. Facilities operated by corporations, unincorporated organizations or associations, individuals, or partnerships shall prepare at the end of each fiscal year:

1. An operating statement showing revenue and expenses for the fiscal year just ended;
2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence that there are sufficient funds to operate; and
3. A balance sheet showing assets and liabilities for the fiscal year just ended.

B. There shall be a system of financial recordkeeping that shows a separation of the facility's accounts from all other records.

C. The provider shall develop and implement written policies and procedures that address the day-to-day handling of facility funds to include:

1. Handling of deposits;
2. Writing of checks; and

3. Handling of petty cash.

**22VAC40-151-140. Insurance.**

A. The provider shall maintain liability insurance covering the premises and the facility's operations.

B. The provider shall provide documentation that all vehicles used to transport residents are insured, including vehicles owned by staff.

C. The members of the governing body and staff who have been authorized to handle the facility's or residents' funds shall be bonded or otherwise indemnified against employee dishonesty.

**22VAC40-151-150. Fundraising.**

The provider shall not use residents in its fundraising activities without written permission of the legal guardian and the permission of residents 14 years or older.

**22VAC40-151-160. Weapons.**

The provider shall develop and implement written policies and procedures governing the possession and use of firearms, pellet guns, air guns, and other weapons on the facility's premises and during facility-related activities. The policy shall provide that no firearms, pellet guns, air guns, or other weapons shall be permitted on the premises or at facility-sponsored activities unless the weapons are:

1. In the possession of licensed security personnel or law-enforcement officers;
2. Kept securely under lock and key; or
3. Used by a resident with the legal guardian's permission under the supervision of a responsible adult in accord with policies and procedures developed by the facility for the weapons' lawful and safe use.

**22VAC40-151-170. Relationship to regulatory authority.**

The governing body or its official representative shall notify the department within five working days of any change in administrative structure or newly hired chief administrative officer or program director.

**22VAC40-151-180. Facilities serving persons over the age of 17 years.**

Facilities that are approved to serve persons over the age of 17 years shall comply with these standards for all occupants regardless of age, except when it is determined by the department that housing, programs, services, and supervision for such persons are provided separately from those for the other residents.

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## **22VAC40-151-190. Health information and reporting of disease.**

A. Health information required by this section shall be maintained for each staff member and for each individual who resides in a building occupied by residents, including each person who is not a staff member or resident of the facility. Health information is to be handled, maintained and stored in a fashion that maintains confidentiality of the information at all times.

### B. Tuberculosis evaluation.

1. At the time of hire or residency at the facility, each individual shall submit the results of a screening assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health. The screening assessment shall be no older than 30 days.

2. Each individual shall annually submit the results of a screening assessment, documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health.

### C. Subsequent evaluations for tuberculosis.

1. An individual who comes in contact with a known case of infectious tuberculosis shall be screened as determined appropriate based on consultation with the local health department.

2. An individual who develops chronic respiratory symptoms of three weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.

D. An individual suspected of having infectious tuberculosis shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual is free of infectious tuberculosis.

E. The provider shall report any active case of tuberculosis developed by a staff member or a resident to the local health department.

F. The chief administrative officer shall immediately make or cause to be made a report of an outbreak of disease as defined by the State Board of Health. Such report shall be made by rapid means to the local health director or to the Commissioner of the Virginia Department of Health.

## **22VAC40-151-200. Physical or mental health of personnel.**

A. The provider or the department may require a report of examination by a licensed physician or mental health professional when there are indications that an individual's

physical, mental, or emotional health may jeopardize the care of residents.

B. An individual who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may jeopardize the safety of residents or that would prevent the performance of duties shall be removed immediately from contact with residents and food served to residents until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

## **22VAC40-151-210. Qualifications.**

A. Standards establishing minimum position qualifications shall be applicable to all providers. In lieu of the minimum position qualifications contained in this chapter, providers subject to (i) the regulations of the Virginia Department of Human Resource Management or (ii) the regulations of a local government personnel office may develop written minimum entry-level qualifications in accord with the regulations of the supervising personnel authority.

B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in these standards shall:

1. Meet the qualifications of the position or positions;
2. Fully comply with all applicable standards for each function; and
3. Demonstrate a working knowledge of the policies and procedures that are applicable to his specific position or positions.

C. When services or consultations are obtained on a contractual basis they shall be provided by professionally qualified personnel.

## **22VAC40-151-220. Job descriptions.**

A. There shall be a written job description for each position that, at a minimum, includes the:

1. Job title;
2. Duties and responsibilities of the incumbent;
3. Job title of the immediate supervisor; and
4. Minimum education, experience, knowledge, skills, and abilities required for entry-level performance of the job.

B. A copy of the job description shall be given to each person assigned to a position at the time of employment or assignment.

## **22VAC40-151-230. Written personnel policies and procedures.**

A. The provider shall have and implement provider-approved written personnel policies and make its written personnel policies readily accessible to each staff member.

B. The provider shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each position possess the education, experience, knowledge, skills, and abilities specified in the job description for the position.

## **22VAC40-151-240. Personnel records.**

A. Separate up-to-date written or automated personnel records shall be maintained for each employee, student/intern, volunteer, and contractual service provider for whom background investigations are required by Virginia statute. Content of personnel records of volunteers, students/interns and contractual service providers may be limited to documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations.

B. The records of each employee shall include:

1. A completed employment application form or other written material providing the individual's name, address, phone number, and social security number or other unique identifier;
2. Educational background and employment history;
3. Written references or notations of oral references;
4. Reports of required health examinations;
5. Annual performance evaluations;
6. Date of employment for each position held and separation;
7. Documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations;
8. Documentation of educational degrees and of professional certification or licensure;
9. Documentation of all training required by these standards and any other training received by individual staff; and
10. A current job description.

C. Personnel records, including separate health records, shall be retained in their entirety for at least three years after separation from employment, contractual service, student/intern, or volunteer service.

## **22VAC40-151-250. Staff development.**

A. Required initial training:

1. Within seven days following their begin date, each staff member responsible for supervision of children shall receive basic orientation to the facility's behavior intervention policies, procedures and techniques regarding

less restrictive interventions, timeout, and physical restraint.

2. Within 14 days following an individual's begin date, or before an individual is alone supervising children, the provider shall conduct emergency preparedness and response training that shall include:

- a. Alerting emergency personnel and sounding alarms;
- b. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);
- c. Using, maintaining, and operating emergency equipment;
- d. Accessing emergency information for residents including medical information; and
- e. Utilizing community support services.

3. Within 14 days following their begin date, new employees transferring from other facilities operated by the same provider, relief staff, volunteers and students/interns shall be given orientation and training regarding:

- a. The objectives of the facility;
- b. Practices of confidentiality;
- c. The decisionmaking plan;
- d. The Standards for Licensed Children's Residential Facilities, including the prohibited actions as outlined in this regulation; and
- e. Other policies and procedures that are applicable to their positions, duties and responsibilities.

4. Within 30 days following their begin date, all staff working with residents shall be enrolled in a standard first aid class and in a cardiopulmonary resuscitation class facilitated by the American Red Cross or other recognized authority, unless the individual is currently certified in first aid and cardiopulmonary resuscitation.

5. Within 30 days following their begin date, all staff working with residents shall be trained in child abuse and neglect, mandatory reporting, maintaining appropriate professional relationships and interaction among staff and residents, and suicide prevention.

6. Within 30 days following their begin date, all staff shall be trained on the facility's policies and procedures regarding standard precautions.

7. Within 30 days following their begin date, all staff shall be trained on appropriate siting of children's residential facilities and good neighbor policies and community relations.

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8. Before they can administer medication, all staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications.

9. All staff shall be trained in any area of quality improvement as identified from the results of the quality improvement plan.

## B. Required annual retraining.

1. All employees, contractors, students/interns, and volunteers shall complete an annual refresher emergency preparedness and response training that shall include:

- a. Alerting emergency personnel and sounding alarms;
- b. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);
- c. Using, maintaining, and operating emergency equipment;
- d. Accessing emergency information for residents including medical information; and
- e. Utilizing community support services.

2. All staff who administer medication shall complete annual refresher medication training.

3. All child care staff shall receive annual retraining on the provider's behavior intervention and timeout policies and procedures.

4. All staff working with residents shall receive annual retraining in child abuse and neglect, mandatory reporting, maintaining appropriate professional relationships and interaction among staff and residents, and suicide prevention.

5. All staff shall receive annual retraining on the provider's policies and procedures regarding standard precautions.

C. Each full-time staff person who works with residents shall complete an additional 15 hours of annual training applicable to their job duties.

D. Providers shall develop and implement written policies and procedures to ensure that part-time staff receive training applicable to their positions.

E. Training provided shall be comprehensive and based on the needs of the population served to ensure that staff have the competencies to perform their jobs.

## **22VAC40-151-260. Staff supervision.**

The provider shall develop and implement written policies and procedures regarding the supervision of staff, volunteers, contractors and students/interns. These policies and procedures shall include:

1. Type of supervision;

2. Frequency of supervision; and

3. How the supervision will be documented.

## **22VAC40-151-270. Applicant.**

A. Each applicant shall provide documentation that they have been trained on appropriate siting of children's residential facilities and good neighbor policies and community relations.

B. The applicant shall be interviewed in person by the department to determine the qualifications of the owner or operator as set out in these standards.

C. Should the applicant not be qualified to perform the duties of the chief administrative officer, the applicant shall hire an individual with the qualifications, as set out in these standards, to perform the duties of the chief administrative officer.

## **22VAC40-151-280. Chief administrative officer.**

A. The chief administrative officer shall have the following responsibilities:

1. Responsibility for compliance with the Standards for Licensed Children's Residential Facilities and other applicable standards;

2. Responsibility for all personnel;

3. Responsibility for overseeing the facility operation in its entirety, including the approval of the design of the structured program of care and its implementation; and

4. Responsibility for the facility's financial integrity.

B. A chief administrative officer shall have at least:

1. A master's degree in social work, psychology, counseling or administration and a combination of two years professional experience working with children and in administration and supervision;

2. A baccalaureate degree in social work, psychology, counseling or administration and three years of combined professional experience with children, and in administration and supervisory experience; or

3. A baccalaureate degree and a combination of four years professional experience in a children's residential facility and in administration and supervision.

C. Any applicant for the chief administrative officer position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the chief administrative officer:

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and

2. Documentation of prior relevant experience.

**22VAC40-151-290. Program director.**

A. The facility's program shall be directed by one or more qualified persons.

B. Persons directing programs shall be responsible for the development and implementation of the programs and services offered by the facility, including overseeing assessments, service planning, staff scheduling, and supervision.

C. Persons directing programs of a facility licensed or certified to care for 13 or more residents shall be full time, qualified staff members.

D. A person appointed to direct programs shall have at least:

1. A master's degree in social work, psychology or counseling and a combination of two years professional experience with children, in a children's residential facility and in administration or supervision;

2. A baccalaureate degree in social work, psychology or counseling and a combination of three years professional experience with children, in a children's residential facility and in administration or supervision; or

3. A baccalaureate degree and a combination of four years of professional experience with children, in a children's residential facility and in administration or supervision.

E. Any applicant for the program director position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the program director:

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and

2. Documentation of prior relevant experience.

**22VAC40-151-300. Case manager.**

A. Case managers shall have the responsibility for:

1. Coordination of all services offered to each resident; and

2. Provision of case management services as required in 22VAC40-151-700.

B. Case managers shall have:

1. A master's degree in social work, psychology, or counseling;

2. A baccalaureate degree in social work or psychology with documented field work experience and must be supervised by the program director or other staff employed by the provider with the same qualifications as required by 22VAC40-151-290 D; or

3. A baccalaureate degree and three years of professional experience working with children.

**22VAC40-151-310. Child care supervisor.**

A. Child care supervisors shall have responsibility for the:

1. Development of the daily living program within each child care unit; and

2. Orientation, training and supervision of direct care workers.

B. Child care supervisors shall have:

1. A baccalaureate degree in social work or psychology and two years of professional experience working with children one year of which must have been in a residential facility for children;

2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years professional experience working with children with at least two years in a residential facility for children; or

3. A combination of education and experience working with children as approved by the department.

**22VAC40-151-320. Child care staff.**

A. The child care worker shall have responsibility for guidance and supervision of the children to whom he is assigned including:

1. Overseeing physical care;

2. Development of acceptable habits and attitudes;

3. Management of resident behavior; and

4. Helping to meet the goals and objectives of any required service plan.

B. A child care worker and a relief child care worker shall:

1. Have a baccalaureate degree in human services;

2. Have an associates degree and three months experience working with children; or

3. Be a high school graduate or have a General Education Development Certificate (G.E.D.) and have six months of experience working with children.

C. Child care staff with a high school diploma or G.E.D. with no experience working with children may not work alone, but may be employed as long as they are working directly with the chief administrative officer, program director, case manager, child care supervisor or a child care worker with one or more years professional experience working with children.

D. An individual hired, promoted, demoted, or transferred to a child care worker's position shall be at least 21 years old.

E. The provider shall not be dependent on temporary contract workers to provide resident care.

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## **22VAC40-151-330. Relief staff.**

Qualified relief staff shall be employed as necessary to meet the needs of the programs and services offered and to maintain a structured program of care in accordance with 22VAC40-151-720.

## **22VAC40-151-340. Volunteers and student/interns.**

A. A facility that uses volunteers or students/interns shall develop and implement written policies and procedures governing their selection and use.

B. The facility shall not be dependent upon volunteers or students/interns to provide basic services.

C. Responsibilities of volunteers and students/interns shall be clearly defined in writing.

D. Volunteers and students/interns shall have qualifications appropriate to the services they render.

## **22VAC40-151-350. Support functions.**

A. Child care workers and other staff responsible for child care may assume the duties of nonchild care personnel only when these duties do not interfere with their child care responsibilities.

B. Residents shall not be solely responsible for support functions, including but not necessarily limited to, food service, maintenance of building and grounds, and housekeeping.

## **22VAC40-151-360. Buildings, inspections and building plans.**

A. All buildings and building related equipment shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy.

B. The facility shall document at the time of its original application evidence of consultation with state or local fire prevention authorities.

C. The facility shall document annually after the initial application that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51).

D. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by state or local health authorities, whose inspection and approval shall include:

1. General sanitation;
2. The sewage disposal system;
3. The water supply; and
4. Food service operations.

E. The buildings and physical environment shall provide adequate space and shall be of a design that is suitable to

house the programs and services provided and meet specialized needs of the residents.

F. Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted to and approved by the department and by other appropriate regulatory authorities.

G. Swimming pools shall be inspected annually by the state or local health authorities or by a swimming pool business.

## **22VAC40-151-370. Heating systems, ventilation and cooling.**

A. Heat shall be evenly distributed in all rooms occupied by the residents such that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities.

B. Natural or mechanical ventilation to the outside shall be provided in all rooms used by residents.

C. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F.

## **22VAC40-151-380. Lighting.**

A. Artificial lighting shall be by electricity.

B. All areas within buildings shall be lighted for safety and the lighting shall be sufficient for the activities being performed.

C. Lighting in halls shall be adequate and shall be continuous at night.

D. Operable flashlights or battery-powered lanterns shall be available for each staff member on the premises between dusk and dawn to use in emergencies.

E. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

## **22VAC40-151-390. Plumbing.**

A. Plumbing shall be maintained in good operational condition.

B. An adequate supply of hot and cold running water shall be available at all times.

C. Precautions shall be taken to prevent scalding from running water. Water temperatures should be maintained at 100°F - 120°F.

## **22VAC40-151-400. Toilet facilities.**

A. There shall be at least one toilet, one hand basin, and one shower or bathtub in each living unit.

B. There shall be at least one bathroom equipped with a bathtub in each facility.

C. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities licensed before July 1, 1981.

D. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981.

E. The maximum number of staff members on duty in the living unit shall be counted in determining the required number of toilets and hand basins when a separate bathroom is not provided for staff.

F. There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located.

### **22VAC40-151-410. Personal necessities.**

A. An adequate supply of personal necessities shall be available to the residents at all times for purposes of personal hygiene and grooming.

B. Clean, individual washcloths and towels shall be in good repair and available once each week and more often if needed.

C. When residents are incontinent or not toilet trained:

1. Provision shall be made for sponging, diapering or other similar care on a nonabsorbent changing surface that shall be cleaned with warm soapy water after each use.

2. A covered diaper pail, or its equivalent, with leak proof disposable liners shall be used to dispose of diapers. If both cloth and disposable diapers are used there shall be a diaper pail for each.

3. Adapter seats and toilet chairs shall be cleaned immediately after each use with appropriate cleaning materials.

4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting a child or themselves with toileting.

5. Appropriate privacy, confidentiality and dignity shall be maintained for residents during toileting and diapering.

### **22VAC40-151-420. Sleeping areas.**

A. When residents are four years of age or older, boys and girls shall have separate sleeping areas.

B. No more than four children shall share a bedroom or sleeping area.

C. Children who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking shall be provided with a planned, personalized means of effective egress for use in emergencies.

D. Beds shall be at least three feet apart at the head, foot, and sides and double-decker beds shall be at least five feet apart at the head, foot, and sides.

E. Sleeping quarters in facilities licensed by DSS prior to July 1, 1981, and facilities established, constructed or structurally modified after July 1, 1981, except for primitive campsites, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;

2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and

3. Ceilings with a primary height at least 7-1/2 feet in height exclusive of protrusions, duct work, or dormers.

F. Each child shall have a separate, clean, comfortable bed equipped with a clean mattress, clean pillow, clean blankets, clean bed linens, and, if needed, a clean waterproof mattress cover.

G. Bed linens shall be changed at least every seven days and more often if needed.

H. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

I. Cribs shall be provided for residents under two years of age.

J. Each resident shall be assigned drawer space and closet space, or their equivalent, which is accessible to the sleeping area for storage of clothing and personal belongings.

K. The environment of sleeping areas shall be conducive to sleep and rest.

### **22VAC40-151-430. Smoking prohibition.**

Smoking shall be prohibited in living areas and in areas where residents participate in programs.

### **22VAC40-151-440. Residents' privacy.**

A. When bathrooms are not designated for individual use:

1. Each toilet shall be enclosed for privacy; and

2. Bathtubs and showers shall provide visual privacy for bathing by use of enclosures, curtains or other appropriate means.

B. Windows in bathrooms, sleeping areas, and dressing areas shall provide for privacy.

C. Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily opened in case of fire or other emergency.

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D. Residents shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities. This section does not apply to medical personnel performing medical procedures, to staff providing assistance to infants, or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record.

E. Video and audio monitoring shall be permitted only with the approval of the department.

## **22VAC40-151-450. Living rooms and indoor recreation space.**

A. Each living unit shall have a living room, or other area for informal use, for relaxation and entertainment. The furnishings shall provide a comfortable, home like environment that is appropriate to the ages of the residents.

B. All facilities shall have indoor recreation space that contains indoor recreation materials appropriate to the ages and interests of the residents.

C. Facilities licensed or certified to care for 13 or more residents shall have indoor recreation space distinct from the living room. Recreation space is not required in every living unit.

## **22VAC40-151-460. Study space.**

A. Facilities serving a school-age population shall provide study space. Study space may be assigned in areas used interchangeably for other purposes.

B. Study space shall be well lighted, quiet, and equipped with tables or desks and chairs.

## **22VAC40-151-470. Kitchen and dining areas.**

A. Meals shall be served in areas equipped with sturdy tables and benches or chairs that are size and age appropriate for the residents.

B. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

C. Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

## **22VAC40-151-480. Laundry areas.**

Appropriate space and equipment in good repair shall be provided if laundry is done at the facility.

## **22VAC40-151-490. Storage.**

Space shall be provided for safe storage of items such as first-aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials.

## **22VAC40-151-500. Staff quarters.**

A. A separate, private bedroom shall be provided for staff and their families when a staff member is on duty for 24 consecutive hours or more.

B. A separate private bathroom shall be provided for staff and their families when there are more than four persons in the living unit and the staff person is on duty for 24 consecutive hours or more.

C. Staff and members of their families shall not share bedrooms with residents.

## **22VAC40-151-510. Office space.**

Space shall be provided for administrative activities including, as appropriate to the program, confidential conversations and provision for storage of records and materials.

## **22VAC40-151-520. Buildings and grounds.**

A. The facility's grounds shall be safe, properly maintained, and free of clutter and rubbish. The grounds include, but are not limited to, all areas where residents, staff, and visitors may reasonably be expected to have access, including roads, pavements, parking lots, open areas, stairways, railings, and potentially hazardous or dangerous areas.

B. The interior and exterior of all buildings shall be safe, properly maintained, clean and in good working order. This includes, but is not limited to, required locks, mechanical devices, indoor and outdoor equipment, and furnishings.

C. Outdoor recreation space shall be available and appropriately equipped for the residents' use.

## **22VAC40-151-530. Equipment and furnishings.**

A. All furnishings and equipment shall be safe, clean, and suitable to the ages and number of residents.

B. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which children sleep or participate in programs.

## **22VAC40-151-540. Housekeeping and maintenance.**

A. All buildings shall be well ventilated and free of stale, musty, or foul odors.

B. Adequate provision shall be made for the collection and legal disposal of garbage and waste materials.

C. Buildings shall be kept free of flies, roaches, rats, and other vermin.

D. A sanitizing agent shall be used in the laundering of bed, bath, table, and kitchen linens.

## **22VAC40-151-550. Farm and domestic animals.**

A. Horses and other animals maintained on the premises shall be quartered at a reasonable distance from sleeping,

living, eating and food preparation areas, as well as a safe distance from water supplies.

B. Animals maintained on the premises shall be tested, inoculated and licensed as required by law.

C. The premises shall be kept free of stray domestic animals.

D. Pets shall be provided with clean quarters and adequate food and water.

## **22VAC40-151-560. Acceptance of children.**

Children shall be accepted only by written placement agreement with legal guardians or by court order. This requirement does not apply to temporary emergency shelter facilities when self-admission is made according to Virginia law.

## **22VAC40-151-570. Admission procedures.**

A. The facility shall have written criteria for admission that shall include:

1. A description of the population to be served;
2. A description of the types of services offered;
3. Intake and admission procedures;
4. Exclusion criteria to define those behaviors or problems that the facility does not have the staff with experience or training to manage; and
5. Description of how educational services will be provided to the population being served.

B. The facility shall accept and serve only those children whose needs are compatible with the services provided through the facility unless a child's admission is ordered by a court of competent jurisdiction.

C. Each facility shall provide documentation showing proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's program description as defined by the facility's criteria of admission.

## **22VAC40-151-580. Maintenance of residents' records.**

A. A separate written or electronic case record shall be maintained for each resident. In addition, all correspondence and documents received by the facility relating to the care of that resident shall be maintained as part of the case record. A separate health record may be kept on each resident.

B. Each case record and health record shall be kept up to date and in a uniform manner.

C. The provider shall develop and implement written policies and procedures for management of all records, written and electronic, that shall describe confidentiality,

accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and acquiring of information only to persons legally authorized according to federal and state laws;

2. Facilities using electronic records shall address procedures that include:

- a. How records are protected from unauthorized access;
- b. How records are protected from unauthorized Internet access;
- c. How records are protected from loss;
- d. How records are protected from unauthorized alteration; and
- e. How records are backed up;

3. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information and transportation of records between service sites;

4. Designation of person responsible for records management; and

5. Disposition of records in the event the facility ceases to operate.

D. The policy shall specify what information is available to the resident.

E. Active and closed records shall be kept in areas that are accessible to authorized staff and protected from unauthorized access, fire, and flood.

1. When not in use written records shall be stored in a metal file cabinet or other metal compartment.

2. Facility staff shall assure the confidentiality of the residents' records by placing them in a locked cabinet or drawer or in a locked room when the staff member is not present.

F. Each resident's written case and health records shall be stored separately subsequent to the resident's discharge according to applicable statutes and regulations.

G. Written and electronic records shall be retained in their entirety for a minimum of three years after the date of discharge unless otherwise specified by state or federal requirements.

H. The face sheet shall be retained permanently unless otherwise specified by state or federal requirements.

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## **22VAC40-151-590. Interstate Compact on the Placement of Children.**

A. Documentation of the prior approval of the administrator of the Virginia Interstate Compact on the Placement of Children, Virginia Department of Social Services shall be retained in the record of each resident admitted from outside Virginia. The requirements of this section shall not apply to a facility providing documentation that the administrator of the Virginia Interstate Compact has determined the facility is statutorily exempt from the compact's provisions.

B. Documentation that the provider has sent copies of all serious incident reports regarding any child placed through the Interstate Compact to the administrator of the Virginia Interstate Compact on the Placement of Children shall be kept in the resident's record.

C. No later than five days after a resident has been transferred to another facility operated by the same sponsor, the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the resident's transfer.

D. No later than 10 days after discharge the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the discharge.

E. The provider shall not discharge or send out-of-state youth in the custody of out-of-state social services agencies and courts to reside with a parent, relative, or other individual who lives in Virginia without the approval of the administrator of the Virginia Interstate Compact on the Placement of Children.

## **22VAC40-151-600. Participation of residents in human research.**

The provider shall:

1. Implement a written policy stating that residents will not be used as subjects of human research; or
2. Document approval, as required by the department, for each research project using residents as subjects of human research, unless such research is exempt from review.

## **22VAC40-151-610. Emergency and self-admissions.**

Providers accepting emergency or self-admissions shall:

1. Develop and implement written policies and procedures governing such admissions that shall include procedures to make and document prompt efforts to obtain (i) a written placement agreement signed by the legal guardian or (ii) the order of a court of competent jurisdiction;
2. Place in each resident's record the order of a court of competent jurisdiction, a written request for care, or documentation of an oral request for care; and justification

of why the resident is to be admitted on an emergency basis; and

3. Clearly document in written assessment information gathered for the emergency admission that the individual meets the facility's criteria for admission.

## **22VAC40-151-620. Application for admission.**

A. Admission shall be based on evaluation of an application for admission. The requirements of this section do not apply to court-ordered placements or transfer of a resident between residential facilities located in Virginia and operated by the same sponsor.

B. Providers shall develop, and fully complete prior to acceptance for care, an application for admission that is designed to compile information necessary to determine:

1. The educational needs of the prospective resident;
2. The mental health, emotional, and psychological needs of the prospective resident;
3. The physical health needs, including the immunization needs, of the prospective resident;
4. The protection needs of the prospective resident;
5. The suitability of the prospective resident's admission;
6. The behavior support needs of the prospective resident; and
7. Information necessary to develop a service plan and a behavior support plan.

C. The resident's record shall contain a completed application for admission at the time of a routine admission or within 30 days after an emergency admission.

D. Each facility shall develop and implement written policies and procedures to assess each prospective resident as part of the application process to ensure that:

1. The needs of the prospective resident can be addressed by the facility's services;
2. The facility's staff are trained to meet the prospective resident's needs; and
3. The admission of the prospective resident would not pose any significant risk to (i) the prospective resident or (ii) the facility's residents or staff.

## **22VAC40-151-630. Written placement agreement.**

A. The facility, except a facility that accepts admission only upon receipt of the order of a court of competent jurisdiction, shall develop a written placement agreement that:

1. Authorizes the resident's placement;
2. Addresses acquisition of and consent for any medical treatment needed by the resident;

3. Addresses the rights and responsibilities of each party involved;

4. Addresses financial responsibility for the placement;

5. Addresses visitation with the resident; and

6. Addresses the education plan for the resident and the responsibilities of all parties.

B. Each resident's record shall contain, prior to a routine admission, a completed placement agreement signed by a facility representative and the legal guardian or placing agency, except as permitted for temporary emergency shelters pursuant to §63.2-1817 of the Code of Virginia.

C. The record of each person admitted based on a court order shall contain a copy of the court order.

### **22VAC40-151-640. Face sheet.**

A. At the time of admission, each resident's record shall include a completed face sheet that contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, emergency contacts and parents, if appropriate.

B. Information shall be updated when changes occur.

C. The face sheet for pregnant teens shall also include the expected date of delivery and the name of the hospital to provide delivery services to the resident.

D. The face sheet of residents who are transferred to facilities operated by the same sponsor shall indicate the address and dates of placement and transfer at each location.

E. At the time of discharge the following information shall be added to the face sheet:

1. Date of discharge;

2. Reason for discharge;

3. Names and addresses of persons to whom the resident was discharged; and

4. Forwarding address of the resident, if known.

### **22VAC40-151-650. Initial objectives and strategies.**

Within three days following admission, individualized, measurable objectives and strategies for the first 30 days shall be developed, distributed to affected staff and the resident, and placed in the resident's record. The objectives and strategies shall be based on the reasons for admitting the resident.

### **22VAC40-151-660. Service plan/quarterly reports.**

A. An individualized service plan shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter.

B. Individualized service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;

2. Resident's current level of functioning;

3. Goals, objectives and strategies established for the resident;

4. Projected family involvement;

5. Projected date for accomplishing each objective; and

6. Status of the projected discharge plan and estimated length of stay except that this requirement shall not apply to a facility that discharges only upon receipt of the order of a court of competent jurisdiction.

C. The initial service plan shall be reviewed within 60 days of the initial plan and within each 90-day period thereafter and revised as necessary.

D. The provider shall develop and implement written policies and procedures to document progress of the resident towards meeting goals and objectives of the service plan that shall include the:

1. Format;

2. Frequency; and

3. Person responsible.

E. There shall be a documented quarterly review of each resident's progress 60 days following the initial service plan and within each 90-day period thereafter and shall report the:

1. Resident's progress toward meeting the plan's objectives;

2. Family's involvement;

3. Continuing needs of the resident;

4. Resident's progress towards discharge; and

5. Status of discharge planning.

F. Each plan and quarterly progress report shall include the date it was developed and the signature of the person who developed it.

G. Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe the resident's behavior in terms of the objectives in the plan.

H. There shall be documentation showing the involvement of the following parties unless clearly inappropriate, in

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developing and updating the individualized service plan and in developing the quarterly progress report:

1. The resident;
2. The resident's family, if appropriate, and legal guardian;
3. The placing agency; and
4. Facility staff.

I. The initial individualized service plan, each update, and all quarterly progress reports shall be distributed to the resident; the resident's family, legal guardian, or legally authorized representative; the placing agency; and appropriate facility staff if allowed by federal guidelines and using all procedures as required by federal guidelines.

## **22VAC40-151-670. Resident transfer between residential facilities located in Virginia and operated by the same sponsor.**

A. Except when transfer is ordered by a court of competent jurisdiction, the receiving provider shall document at the time of transfer:

1. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the population served, activities and criteria for admission;
2. Notification to the family, if appropriate; the resident, the placement agency and the legal guardian;
3. Receipt from the sending facility of a written summary of the resident's progress while at the facility, justification for the transfer, and the resident's current strengths and needs; and
4. Receipt of the resident's record.

B. The sending facility shall retain a copy of the face sheet and a written summary of the child's progress while at the facility and shall document the date of transfer and the name of the facility to which the resident has been transferred.

## **22VAC40-151-680. Discharge.**

A. The provider shall have written criteria for discharge that shall include:

1. Criteria for a resident's completing the program that are consistent with the facility's programs and services;
2. Conditions under which a resident may be discharged before completing the program; and
3. Procedures for assisting placing agencies in placing the residents should the facility cease operation.

B. The provider's criteria for discharge shall be accessible to prospective residents, legal guardians, and placing agencies.

C. The record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

D. Residents shall be discharged only to the legal guardian or legally authorized representative.

E. Information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized representative, as appropriate.

F. Unless discharge is ordered by a court of competent jurisdiction, prior to the planned discharge date, each resident's record shall contain:

1. Documentation that discharge has been planned and discussed with the parent, legal guardian, child-placing agency, and resident; and
2. A written discharge plan.

G. Discharge summaries.

1. No later than 30 days after discharge, a comprehensive discharge summary shall be placed in the resident's record and sent to the persons or agency that made the placement. The discharge summary shall review:

- a. Services provided to the resident;
- b. The resident's progress toward meeting service plan objectives;
- c. The resident's continuing needs and recommendations if any, for further services and care;
- d. Reasons for discharge and names of persons to whom resident was discharged;
- e. Dates of admission and discharge; and
- f. Date the discharge summary was prepared and the signature of the person preparing it.

2. In lieu of a comprehensive discharge summary, the record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

## **22VAC40-151-690. Placement of residents outside the facility.**

A resident shall not be placed outside the facility prior to the facility's obtaining a child-placing agency license from the Department of Social Services, except as permitted by statute or by order of a court of competent jurisdiction.

## **22VAC40-151-700. Case management services.**

A. The program of the facility shall be designed to provide case management services. Case management services shall address:

1. Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living;

2. Assisting the resident and the family to maintain their relationships and prepare for the resident's future care;

3. Utilizing appropriate community resources to provide services and maintain contacts with such resources;

4. Helping the resident strengthen his capacity to function productively in interpersonal relationships;

5. Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living; and

6. Working with the resident and with the family or any placing agency that may be involved in planning for the resident's future and in preparing the resident for the return home or to another family, for independent living, or for other residential care.

B. The provision of case management services shall be documented in each resident's record.

### **22VAC40-151-710. Therapy.**

Therapy, if provided, shall be provided by an individual (i) licensed as a therapist by the Department of Health Professions or (ii) who is licensure eligible and working under the supervision of a licensed therapist, unless exempted from these requirements under the Code of Virginia.

### **22VAC40-151-720. Structured program of care.**

A. There shall be evidence of a structured program of care designed to:

1. Meet the residents' physical and emotional needs;

2. Provide protection, guidance, and supervision; and

3. Meet the objectives of any required service plan.

B. There shall be evidence of a structured daily routine designed to ensure the delivery of program services.

C. A daily communication log shall be maintained to inform staff of significant happenings or problems experienced by residents.

D. Health and dental complaints and injuries shall be recorded and shall include the (i) resident's name, complaint, and affected area and (ii) time of the complaint.

E. The identity of the individual making each entry in the daily communication log shall be recorded.

F. Routines shall be planned to ensure that each resident receives the amount of sleep and rest appropriate for his age and physical condition.

G. Staff shall promote good personal hygiene of residents by monitoring and supervising hygiene practices each day and by providing instruction when needed.

H. The structured daily routine shall comply with any facility and locally imposed curfews.

### **22VAC40-151-730. Health care procedures.**

A. The provider shall have and implement written procedures for promptly:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;

2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission;

3. Providing emergency services for each resident as provided by statute or by the agreement with the resident's legal guardian;

4. Providing emergency services for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and

5. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;

2. Name, address, and telephone number of a relative or other person to be notified;

3. Medical insurance company name and policy number or Medicaid number;

4. Information concerning:

a. Use of medication;

b. All allergies, including medication allergies;

c. Substance abuse and use; and

d. Significant past and present medical problems.

5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent.

### **22VAC40-151-740. Medical examinations and treatment.**

A. Each child accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility or no later than seven days following admission, except (i) the

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report of an examination within the preceding 12 months shall be acceptable if a child transfers from one residential facility licensed or certified by a state agency to another, (ii) a physical examination shall be conducted within 30 days following an emergency admission if a report of physical examination is not available, and (iii) this requirement does not apply if a child is admitted to a temporary emergency shelter facility.

B. Within seven days of placement, each resident shall have had a screening assessment for tuberculosis as evidenced by the completion of a screening form containing, at a minimum, the elements found on the current screening form published by the Virginia Department of Health. The screening assessment shall be no older than 30 days.

C. A screening assessment for tuberculosis shall be completed annually on each resident as evidenced by the completion of a form containing, at a minimum, the elements of the screening form published by the Virginia Department of Health.

D. Each resident's health record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow-up care, and (iii) documentation of the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident.

E. Each physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:

a. Immunizations administered at the time of the exam;

b. Vision exam;

c. Hearing exam;

d. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;

e. Allergies, chronic conditions, and handicaps, if any;

f. Nutritional requirements, including special diets, if any;

g. Restrictions on physical activities, if any; and

h. Recommendations for further treatment, immunizations, and other examinations indicated;

2. Date of the physical examination; and

3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

F. A child with a communicable disease shall not be admitted unless a licensed physician certifies that:

1. The facility is capable of providing care to the child without jeopardizing residents and staff; and

2. The facility is aware of the required treatment for the child and the procedures to protect residents and staff.

The requirements of this subsection shall not apply to temporary emergency shelter facilities.

G. Each resident's health record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) documentation of follow-up dental care recommended by the dentist or as indicated by the needs of the resident. This requirement does not apply to temporary emergency shelter facilities.

H. Each resident's health record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given.

I. Each resident's health record shall include, or document the facility's efforts to obtain, treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable.

J. The provider shall develop and implement written policies and procedures that include use of standard precautions and addresses communicable and contagious medical conditions. These policies and procedures shall be approved by a medical professional.

K. A well-stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

## **22VAC40-151-750. Medication.**

A. All medication shall be securely locked and properly labeled.

B. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications before they can administer medication.

C. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

D. A program of medication, including over-the-counter medication, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

E. Medication prescribed by a person authorized by law shall be administered as prescribed.

F. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed;

2. Drug name;

3. Schedule for administration;

4. Strength;

5. Route;

6. Identity of the individual who administered the medication; and

7. Dates the medication was discontinued or changed.

G. In the event of a medication error or an adverse drug reaction, first aid shall be administered if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse, or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented.

H. Medication refusals shall be documented including action taken by staff.

I. The provider shall develop and implement written policies and procedures for documenting medication errors, reviewing medication errors and reactions and making any necessary improvements, the disposal of medication, the storage of controlled substances, and the distribution of medication off campus. The policy and procedures must be approved by a health care professional. The provider shall keep documentation of this approval.

J. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which children sleep or participate in programs.

K. Syringes and other medical implements used for injecting or cutting skin shall be stored in a locked area.

## **22VAC40-151-760. Nutrition.**

A. Each resident shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals and an evening snack, (ii) includes an adequate variety and quantity of food for the age of the resident, and (iii) meets minimum nutritional requirements and the U.S. Dietary Guidelines.

B. Menus of actual meals served shall be kept on file for at least six months.

C. Special diets shall be provided when prescribed by a physician and the established religious dietary practices of the resident shall be observed.

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a special diet has been prescribed by a physician for the staff or residents or the staff or residents are observing established religious dietary practices.

E. There shall not be more than 15 hours between the evening meal and breakfast the following day.

F. Providers shall assure that food is available to residents who need to eat breakfast before the 15 hours have expired.

G. Providers shall receive approval from the department if they wish to extend the time between meals on weekends and holidays. There shall never be more than 17 hours between the evening meal and breakfast the following day on weekends and holidays.

## **22VAC40-151-770. Staff supervision of residents.**

A. No member of the child care staff shall be on duty more than six consecutive days without a rest day, except in an emergency or as approved by the department for live-in staff.

B. Child care staff shall have an average of at least two rest days per week in any four-week period. Rest days shall be in addition to vacation time and holidays.

C. Child care staff other than live-in staff shall not be on duty more than 16 consecutive hours, except in an emergency.

D. There shall be at least one trained child care worker, on duty and actively supervising residents at all times that one or more residents are present.

E. Whenever children are being supervised by staff there shall be at least one staff person present with a current basic certificate in standard first aid and a current certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority.

F. Supervision policies.

1. The provider shall develop and implement written policies and procedures that address staff supervision of children including contingency plans for resident illnesses, emergencies, off-campus activities, and resident preferences. These policies and procedures shall be based on the:

- a. Needs of the population served;
- b. Types of services offered;
- c. Qualifications of staff on duty; and
- d. Number of residents served.

2. At all times the ratio of staff to residents shall be at least one staff to eight residents for facilities during the hours residents are awake, except when the department has approved or required a supervision plan with a different ratio based on the needs of the population served.

3. Providers requesting a ratio that allows a higher number of residents to be supervised by one staff person than was approved or required shall submit a justification to the lead regulatory agency that shall include:

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- a. Why resident care will not be adversely affected; and
- b. How residents' needs will be met on an individual as well as group basis.

4. Written policies and procedures governing supervision of residents and any justifications for a ratio deviation that allows a higher number of residents to be supervised by one staff than was approved or required, shall be reviewed and approved by the regulatory authority prior to implementation.

5. The supervision policies or a summary of the policies shall be provided, upon request, to the placing agency or legal guardian prior to placement.

## **22VAC40-151-780. Emergency telephone numbers.**

A. There shall be an emergency telephone number where a staff person may be immediately contacted 24 hours a day.

B. Residents who are away from the facility and the adults responsible for their care during the absence shall be furnished with the emergency phone number.

## **22VAC40-151-790. Searches.**

A. Strip searches and body cavity searches are prohibited.

B. A provider that does not conduct pat downs shall have a written policy prohibiting them.

C. A provider that conducts pat downs shall develop and implement written policies and procedures governing them that shall provide that:

- 1. Pat downs shall be limited to instances where they are necessary to prohibit contraband;
- 2. Pat downs shall be conducted by personnel of the same gender as the resident being searched;
- 3. Pat downs shall be conducted only by personnel who are specifically authorized to conduct searches by the written policies and procedures; and
- 4. Pat downs shall be conducted in such a way as to protect the subject's dignity and in the presence of one or more witnesses.

## **22VAC40-151-800. Behavior support.**

A. Within 30 days of admission, the provider shall develop and implement a written behavior support plan that allows the resident to self-manage his own behaviors. Each individualized plan shall include:

- 1. Identification of positive and problem behavior;
- 2. Identification of triggers for behaviors;
- 3. Identification of successful intervention strategies for problem behavior;
- 4. Techniques for managing anger and anxiety; and

5. Identification of interventions that may escalate inappropriate behaviors.

B. Individualized behavior support plans shall be developed in consultation with the:

- 1. Resident;
- 2. Legal guardian;
- 3. Resident's parents, if applicable;
- 4. Program director;
- 5. Placing agency staff; and
- 6. Other applicable individuals.

C. Prior to working alone with an assigned resident each staff member shall demonstrate knowledge and understanding of that resident's behavior support plan.

## **22VAC40-151-810. Timeout.**

A. The provider shall develop and implement written policies and procedures governing the conditions under which a resident may be placed in timeout and the maximum period of timeout. The conditions and maximum period of timeout shall be based on the resident's chronological and developmental level.

B. The area in which a resident is placed shall not be locked nor the door secured in a manner that prevents the resident from opening it.

C. A resident in timeout shall be able to communicate with staff.

D. Staff shall check on the resident in the timeout area at least every 15 minutes and more often depending on the nature of the resident's disability, condition, and behavior.

E. Use of timeout and staff checks on the residents shall be documented.

## **22VAC40-151-820. Prohibitions.**

The following actions are prohibited:

- 1. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;
- 2. Limitation on contacts and visits with the resident's attorney, a probation officer, regulators, or placing agency representative;
- 3. Bans on contacts and visits with family or legal guardians, except as permitted by order of a court of competent jurisdiction;
- 4. Delay or withholding of incoming or outgoing mail, except as permitted by order of a court of competent jurisdiction;

5. Any action that is humiliating, degrading, or abusive;
6. Corporal punishment;
7. Subjection to unsanitary living conditions;
8. Deprivation of opportunities for bathing or access to toilet facilities, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;
9. Deprivation of medical, dental or mental health care;
10. Deprivation of appropriate and necessary services;
11. Application of aversive stimuli;
12. Administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;
13. Deprivation of opportunities for sleep or rest, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record; and
14. Limitation on contacts and visits with advocates employed by the Virginia Office for Protection and Advocacy.

**22VAC40-151-830. Pharmacological or mechanical restraints.**

- A. Use of mechanical restraints is prohibited.
- B. Use of pharmacological restraints is prohibited.

**22VAC40-151-840. Behavior interventions.**

A. The provider shall develop and implement written policies and procedures for behavioral interventions and for documenting and monitoring the management of resident behavior. Rules of conduct shall be included in the written policies and procedures. These policies and procedures shall:

1. Define and list techniques that are used and available for us in the order of their relative degree of restrictiveness;
2. Specify the staff members who may authorize the use of each technique; and
3. Specify the processes for implementing such policies and procedures.

B. Written information concerning the policies and procedures of the provider's behavioral support and intervention programs shall be provided prior to admission to prospective residents, legal guardians, and placing agencies. For emergency and court-ordered admissions, this information shall be provided to:

1. Residents within 12 hours following admission;

2. Placing agencies within 72 hours following the resident's admission; and

3. Legal guardians within 72 hours following the resident's admission.

C. When substantive revisions are made to policies and procedures governing management of resident behavior, written information concerning the revisions shall be provided to:

1. Residents prior to implementation; and
2. Legal guardians and placing agencies prior to implementation.

D. The provider shall develop and implement written policies and procedures governing use of physical restraint that shall include:

1. The staff position who will write the report and timeframe;
2. The staff position who will review the report and timeframe; and
3. Methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

E. All physical restraints shall be reviewed and evaluated to plan for continued staff development for performance improvement.

F. Use of physical restraint shall be limited to that which is minimally necessary to protect the resident or others.

G. Trained staff members may physically restrain a resident only after less restrictive interventions have failed or when failure to restrain would result in harm to the resident or others.

H. Only trained staff members may manage resident behavior.

I. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date;
2. Time;
3. Staff involved;
4. Justification for the restraint;
5. Less restrictive interventions that were unsuccessfully attempted prior to using physical restraint;
6. Duration;
7. Description of method or methods of physical restraint techniques used;

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8. Signature of the person completing the report and date; and

9. Reviewer's signature and date.

J. Providers shall ensure that restraint may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of restraint, including hands-on techniques.

K. The provider shall review the facility's behavior intervention techniques and policies and procedures at least annually to determine appropriateness for the population served.

L. Any time children are present staff must be present who have completed all trainings in behavior intervention.

## **22VAC40-151-850. Seclusion.**

Seclusion is prohibited.

## **22VAC40-151-860. Education.**

A. Each resident of compulsory school attendance age shall be enrolled, as provided in the Code of Virginia, in an appropriate educational program within five school business days. Documentation of the enrollment shall be kept in the resident's record.

B. The provider shall ensure that educational guidance and counseling in selecting courses is provided for each resident and shall ensure that education is an integral part of the resident's total program.

C. Providers operating educational programs for children with disabilities shall operate those programs in compliance with applicable state and federal statutes and regulations.

D. When a child with a disability has been placed in a residential facility, the facility shall contact the division superintendent of the resident's home locality. Documentation of the contact with the resident's home school shall be kept in the resident's record.

E. A provider that has an academic or vocational program that is not certified or approved by the Department of Education shall document that teachers meet the qualifications to teach the same subjects in the public schools.

F. Each provider shall develop and implement written policies and procedures to ensure that each resident has adequate study time.

## **22VAC40-151-870. Religion.**

A. The provider shall have and implement written policies regarding opportunities for residents to participate in religious activities.

B. The provider's policies on religious participation shall be available to residents and any individual or agency considering placement of a child in the facility.

C. Residents shall not be coerced to participate in religious activities.

## **22VAC40-151-880. Recreation.**

A. The provider shall have a written description of its recreation program that describes activities that are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents that includes:

1. Opportunities for individual and group activities;

2. Free time for residents to pursue personal interests that shall be in addition to a formal recreation program;

3. Use of available community recreational resources and facilities;

4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and

5. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes.

B. The provider shall develop and implement written policies and procedures to ensure the safety of residents participating in recreational activities that include:

1. How activities will be directed and supervised by individuals knowledgeable in the safeguards required for the activities;

2. How residents are assessed for suitability for an activity and the supervision provided; and

3. How safeguards for water-related activities will be provided including ensuring that a certified life guard supervises all swimming activities.

C. For all overnight recreational trips away from the facility the provider shall document trip planning to include:

1. A supervision plan for the entire duration of the activity including awake and sleeping hours;

2. A plan for safekeeping and distribution of medication;

3. An overall emergency, safety, and communication plan for the activity including emergency numbers of facility administration;

4. Staff training and experience requirements for each activity;

5. Resident preparation for each activity;

6. A plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity;

7. A trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen/evaluated;

8. A plan to evaluate residents' physical health throughout the activity and to ensure that the activity is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;

9. A plan to ensure that a certified life guard supervises all swimming activities in which residents participate; and

10. Documentation of any variations from trip plans and reason for the variation.

D. All out-of-state or out-of-country recreational trips require written permission from each resident's legal guardian. Documentation of the written permission shall be kept in the resident's record.

### **22VAC40-151-890. Community relationships.**

A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community.

B. The provider shall develop and implement written policies and procedures for evaluating persons or organizations in the community who wish to associate with residents on the premises or take residents off the premises. The procedures shall cover how the facility will determine if participation in such community activities or programs would be in the residents' best interest.

C. Each facility shall have a staff community liaison who shall be responsible for facilitating cooperative relationships with neighbors, the school system, local law enforcement, local government officials, and the community at large.

D. Each provider shall develop and implement written policies and procedures for promoting positive relationships with the neighbors that shall be approved by the department.

### **22VAC40-151-900. Clothing.**

A. Provision shall be made for each resident to have an adequate supply of clean, comfortable, and well-fitting clothes and shoes for indoor and outdoor wear.

B. Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities.

C. Residents shall have the opportunity to participate in the selection of their clothing.

D. Residents shall be allowed to take personal clothing when leaving the facility.

### **22VAC40-151-910. Allowances and spending money.**

A. The provider shall provide opportunities appropriate to the ages and developmental levels of the residents for learning the value and use of money.

B. There shall be a written policy regarding allowances that shall be made available to legal guardians at the time of admission.

C. The provider shall develop and implement written policies for safekeeping and for recordkeeping of any money that belongs to residents.

D. A resident's funds, including any allowance or earnings, shall be used for the resident's benefit.

### **22VAC40-151-920. Work and employment.**

A. Assignment of chores, that are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the resident.

B. Chores shall not interfere with school programs, study periods, meals, or sleep.

C. Work assignments or employment outside the facility, including reasonable rates of pay, shall be approved by the program director with the knowledge and consent of the legal guardian.

D. In both work assignments and employment, the program director shall evaluate the appropriateness of the work and the fairness of the pay.

### **22VAC40-151-930. Visitation at the facility and to the resident's home.**

A. The provider shall have and implement written visitation policies and procedures that allow reasonable visiting privileges and flexible visiting hours.

B. Copies of the written visitation policies and procedures shall be made available to the parents, when appropriate, legal guardians, the resident, and other interested persons important to the resident no later than the time of admission except that when parents or legal guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 24 hours after admission.

C. In temporary emergency shelter facilities, written visitation policies and procedures shall be provided upon request to parents, legal guardians, residents, and other interested persons important to the residents.

### **22VAC40-151-940. Resident visitation at the homes of staff.**

If a provider permits staff to take residents to the staff's home, the facility must receive written permission of the resident's legal guardian or placing agency before the visit occurs. The written permission shall be kept in the resident's record.

### **22VAC40-151-950. Vehicles and power equipment.**

A. Transportation provided for or used by children shall comply with local, state, and federal laws relating to:

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1. Vehicle safety and maintenance;
2. Licensure of vehicles;
3. Licensure of drivers; and
4. Child passenger safety, including requiring children to wear appropriate seat belts or restraints for the vehicle in which they are being transported.

B. There shall be written safety rules for transportation of residents appropriate to the population served that shall include taking head counts at each stop.

C. The provider shall develop and implement written safety rules for use and maintenance of vehicles and power equipment.

## **22VAC40-151-960. Serious incident reports.**

A. Any serious incident, accident or injury to the resident; any overnight absence from the facility without permission; any runaway; and any other unexplained absence shall be reported within 24 hours to the placing agency, and to either the parent or legal guardian, or both as appropriate. The provider shall make a written reference in the child's record that a report was made.

B. The provider shall document the following:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report; and
5. The name of the person to whom the report was made.

C. The provider shall notify the department within 24 hours of any serious illness or injury, any death of a resident, and all other situations as required by the department. Such reports shall include:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and
6. The name of the person to whom the report was made.

## **22VAC40-151-970. Suspected child abuse or neglect.**

A. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include procedures for:

1. Handling accusations against staff; and

2. Promptly referring, consistent with requirements of the Code of Virginia, suspected cases of child abuse and neglect to the local child protective services unit and for cooperating with the unit during any investigation.

B. Any case of suspected child abuse or neglect shall be reported to the local child protective services unit as required by the Code of Virginia. The provider shall make a written reference in the child's record that a report was made.

C. Any case of suspected child abuse or neglect occurring at the facility, on a facility-sponsored event or excursion, or involving facility staff shall be reported immediately to the department, the placing agency, and to either the resident's parent or legal guardian, or both, as appropriate. The provider shall make a written reference in the child's record that a report was made.

D. When a case of suspected child abuse or neglect is reported to child protective services, the provider shall document the following:

1. The date and time the suspected abuse or neglect occurred;
2. A description of the suspected abuse or neglect;
3. Action taken as a result of the suspected abuse or neglect;
4. The name of the person who made the report to child protective services; and
5. The name of the person to whom the report was made at the local child protective services unit or the department's toll free child abuse and neglect hotline.

## **22VAC40-151-980. Grievance procedures.**

A. The provider shall develop and implement written policies and procedures governing the handling of grievances by residents. If not addressed by other applicable standards, the policies and procedures shall:

1. Be written in clear and simple language;
2. Be communicated to the residents in an age or developmentally appropriate manner;
3. Be posted in an area easily accessible to residents and their parents and legal guardians;
4. Ensure that any grievance shall be investigated by an objective employee who is not the subject of the grievance; and
5. Require continuous monitoring by the provider of any grievance to assure there is no retaliation or threat of retaliation against the child.

B. All documentation regarding grievances shall be kept on file at the facility for three years unless other regulations require a longer retention period.

## 22VAC40-151-990. Emergency and evacuation procedures.

A. The provider shall develop a written emergency preparedness and response plan for all locations. The plan shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks, (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency;

2. Analysis of the provider's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, work place violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities, coordination of logistics during the emergency, communications, life safety of employees, contractors, students/intern, volunteers, visitors and residents, property protection, community outreach, and recovery and restoration;

4. Written emergency response procedures for assessing the situation; protecting residents, employees, contractors, students/interns, volunteers, visitors, equipment and vital records; and restoring services. Emergency procedures shall address:

a. Communicating with employees, contractors and community responders;

b. Warning and notification of residents;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;

e. Relocating residents, if necessary;

f. Notifying family members and legal guardians;

g. Alerting emergency personnel and sounding alarms; and

h. Locating and shutting off utilities when necessary;

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters; and

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. The provider shall develop emergency preparedness and response training for all employees, contractors, students/interns, and volunteers that shall include responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of residents with special needs (i.e., deaf, blind, nonambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency information for residents including medical information; and

5. Utilizing community support services.

C. The provider shall document the review of the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, students/interns, and volunteers and incorporated into training for employees, contractors, students/interns and volunteers and orientation of residents to services.

D. In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety and welfare of residents, the provider shall take appropriate action to protect the health, safety and welfare of the residents and take appropriate action to remedy the conditions as soon as possible.

E. Employees, contractors, students/interns, and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of residents, the provider should first respond and stabilize the disaster/emergency. After the disaster/emergency is stabilized, the provider shall report the disaster/emergency to the legal guardian and the placing agency as soon as possible of the conditions at the facility and report the disaster/emergency to the department as soon as possible, but no later than 72 hours after the incident occurs.

G. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations where they can easily be seen by staff and residents.

H. The procedures and responsibilities reflected in the emergency procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

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I. At least one evacuation drill (the simulation of the facility's emergency procedures) shall be conducted each month in each building occupied by residents.

J. Evacuation drills shall include, at a minimum:

1. Sounding of emergency alarms;
2. Practice in evacuating buildings;
3. Practice in alerting emergency authorities;
4. Simulated use of emergency equipment; and
5. Practice in securing resident emergency information.

K. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

L. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings in which the drill was conducted;
2. Date and time of drill;
3. Amount of time to evacuate the buildings;
4. Specific problems encountered;
5. Staff tasks completed including:
  - a. Head count; and
  - b. Practice in notifying emergency authorities; and
6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

M. The record for each evacuation drill shall be retained for three years after the drill.

N. The facility shall assign one staff member who shall ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

## **22VAC40-151-1000. Independent living programs.**

A. Each independent living program must demonstrate that a structured program using materials and curriculum, approved by the department, is being used to teach independent living skills. The curriculum must include information regarding each of the following areas:

1. Money management and consumer awareness;
2. Food management;
3. Personal appearance;
4. Social skills;
5. Health/sexuality;
6. Housekeeping;

7. Transportation;

8. Educational planning/career planning;

9. Job-seeking skills;

10. Job maintenance skills;

11. Emergency and safety skills;

12. Knowledge of community resources;

13. Interpersonal skills/social relationships;

14. Legal skills;

15. Leisure activities; and

16. Housing.

B. Within 14 days of placement the provider must complete an assessment, including strengths and needs, of the resident's life skills using an independent living assessment tool approved by the department. The assessment must cover the following areas:

1. Money management and consumer awareness;

2. Food management;

3. Personal appearance;

4. Social skills;

5. Health/sexuality;

6. Housekeeping;

7. Transportation;

8. Educational planning/career planning;

9. Job-seeking skills;

10. Job maintenance skills;

11. Emergency and safety skills;

12. Knowledge of community resources;

13. Interpersonal skills/social relationships;

14. Legal skills;

15. Leisure activities; and

16. Housing.

C. The resident's individualized service plan shall include, in addition to the requirements found in 22VAC40-151-660, goals, objectives, and strategies addressing each of the following areas, as applicable:

1. Money management and consumer awareness;

2. Food management;

3. Personal appearance;

4. Social skills;

5. Health/sexuality;
6. Housekeeping;
7. Transportation;
8. Educational planning/career planning;
9. Job-seeking skills;
10. Job maintenance skills;
11. Emergency and safety skills;
12. Knowledge of community resources;
13. Interpersonal skills/social relationships;
14. Legal skills;
15. Leisure activities; and
16. Housing.

D. Each independent living program shall develop and implement policies and procedures to train all direct care staff within 14 days of employment on the content of the independent living curriculum, the use of the independent living materials, the application of the assessment tool, and the documentation methods used. Documentation of the orientation shall be kept in the employee's staff record.

E. If residents age 18 years or older are to share in the responsibility for their own medication with the provider, the independent living program shall develop and implement written policies and procedures that include:

1. Training for the resident in self administration and recognition of side effects;
2. Method for storage and safekeeping of medication;
3. Method for obtaining approval for the resident to self administer medication from a person authorized by law to prescribe medication; and
4. Method for documenting the administration of medication.

F. Each independent living program shall develop and implement written policies and procedures that ensure that each resident is receiving adequate nutrition as required in 22VAC40-151-760 A, B and C.

### **22VAC40-151-1010. Mother/baby programs.**

A. Each provider shall develop and implement written policies and procedures to orient direct care staff within 14 days of hire regarding the following:

1. Responsibilities of mothers regarding the child;
2. Child development including age-appropriate behavior for each stage of development;

3. Appropriate behavioral interventions for infants and toddlers;

4. Basic infant and toddler care including but not limited to nutritional needs, feeding procedures, bathing techniques; and

5. Safety issues for infants and toddlers.

B. Each direct care worker shall have certification in infant CPR and first aid prior to working alone with infants or toddlers.

C. A placement agreement shall be signed by the legal guardian for each adolescent mother and a separate placement agreement shall be signed for each child at the time of admission.

D. In addition to the requirements of 22VAC40-151-620 B, the application for admission for the adolescent's child must include:

1. The placement history of the child;
2. The developmental milestones of the child; and
3. The nutritional needs of the child.

E. In addition to the requirements of 22VAC40-151-640, the face sheet for the adolescent's child shall also include:

1. Type of delivery;
2. Weight and length at birth;
3. Any medications or allergies; and
4. Name and address, if known, of the biological father.

F. A combined service plan following the requirements of 22VAC40-151-660 must be written for the adolescent mother and her child within 30 days of the admission of the adolescent's child.

G. There shall be a combined documented review of the adolescent mother's and her child's progress following the requirements of the quarterly report 60 days following the first combined service plan and within each 90-day period thereafter.

H. The developmental milestones of the adolescent's child must be documented in each quarterly progress report.

I. The record of each child 18 months or younger shall include the child's feeding schedule and directions for feeding. This information shall be posted in the kitchen.

J. The provider shall develop and implement written policies and procedures for tracking:

1. What a child 18 months or younger is eating;
2. How much a child 18 months or younger is eating; and

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3. The response to newly introduced foods of the child 18 months or younger.

K. The provider shall develop and implement written policies and procedures to record all diaper changes.

L. The provider shall monitor that all infants are held and spoken to and placed in a position to observe activities when they are awake.

M. Bottle-fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped.

N. The provider shall monitor that all children of adolescent mothers have access to age-appropriate toys and are provided opportunity for visual and sound stimulation.

O. The provider shall ensure that when an adolescent mother is in school or is working, her child is appropriately cared for, either in a licensed child day program or at the facility.

P. A daily activity log must be kept for each child of the adolescent mother showing what activities the child actually participated in during the day. The daily log must show that children have the opportunity to participate in sensory, language, manipulative, building, large muscle and learning activities.

Q. The provider shall develop and implement written policies and procedures regarding health care of the adolescent's child including:

1. Obtaining health care;
2. Ensuring follow-up care is provided;
3. Ensuring adolescent mothers administer to their children only prescription and nonprescription medication authorized by a health care professional licensed to prescribe medication; and
4. Medication administration.

R. The provider shall develop and implement written policies and procedures to ensure that all toys and equipment to be used by children are sturdy, are of safe construction, are nontoxic and free of hazards, and meet industry safety standards.

S. The facility shall develop and implement written policies and procedures for inspecting toys and equipment on a regular basis for cleanliness and safety.

T. Cribs shall be placed where objects outside the crib such as cords from the blinds or curtains are not within reach of infants or toddlers.

U. Pillows and filled comforters shall not be used by children under two years of age.

V. Infant walkers shall not be used.

W. Adolescent mothers and their babies may share a bedroom as allowed by 22VAC40-151-420, but shall not share a room with other adolescents or their children.

X. Pregnant adolescents may share a room as allowed by 22VAC40-151-420.

Y. Providers shall develop and implement written policies and procedures to protect infants, toddlers, and young children from dangers in their environment. The policies and procedures must include but not be limited to protection from:

1. Electrocutation;
2. Falling down steps or ramps or gaining access to balconies, porches or elevated areas;
3. Poisons, including poisonous plants; and
4. Drowning.

## **22VAC40-151-1020. Campsite programs or adventure activities.**

A. All wilderness campsite programs and providers that take residents on wilderness/adventure activities shall develop and implement policies and procedures that include:

1. Staff training and experience requirements for each activity;
2. Resident training and experience requirements for each activity;
3. Specific staff-to-resident ratio and supervision plan appropriate for each activity, including sleeping arrangements and supervision during night time hours;
4. Plans to evaluate and document each participant's physical health throughout the activity;
5. Preparation and planning needed for each activity and time frames;
6. Arrangement, maintenance, and inspection of activity areas;
7. A plan to ensure that any equipment and gear that is to be used in connection with a specified wilderness/adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age and body size appropriate;
8. Plans to ensure that all ropes and paraphernalia used in connection with rope rock climbing, rappelling, high and low ropes courses or other adventure activities in which ropes are used are approved annually by an appropriate certifying organization, and have been inspected by staff responsible for supervising the adventure activity before engaging residents in the activity;
9. Plans to ensure that all participants are appropriately equipped, clothed, and wearing safety gear, such as a

helmet, goggles, safety belt, life jacket or a flotation device, that is appropriate to the adventure activity in which the resident is engaged;

10. Plans for food and water supplies and management of these resources;

11. Plans for the safekeeping and distribution of medication;

12. Guidelines to ensure that participation is conducted within the boundaries of the resident's capabilities, dignity and respect for self-determination;

13. Overall emergency, safety, and communication plans for each activity including rescue procedures, frequency of drills, resident accountability, prompt evacuation, and notification of outside emergency services; and

14. Review of trip plans by the trip coordinator.

B. All wilderness campsite programs and providers that take residents on wilderness/adventure activities must designate one staff person to be the trip coordinator who will be responsible for all facility wilderness or adventure trips.

1. This person must have experience in and knowledge regarding wilderness activities and be trained in wilderness first aid. The individual must also have at least one year experience at the facility and be familiar with the facility procedures, staff, and residents.

2. Documentation regarding this knowledge and experience shall be found in the individual's staff record.

3. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's policy regarding each wilderness/adventure activity to take place during the trip.

C. The trip coordinator shall conduct a posttrip debriefing within 72 hours of the group's return to base to evaluate individual and group goals as well as the trip as a whole.

D. The trip coordinator will be responsible for writing a summary of the debriefing session and shall be responsible for ensuring that procedures and policies are updated to reflect improvements needed.

E. A trip folder will be developed for each wilderness/adventure activity conducted away from the facility and shall include:

1. Medical release forms including pertinent medical information on the trip participants;

2. Phone numbers for administrative staff and emergency personnel;

3. Daily trip logs;

4. Incident reports;

5. Swimming proficiency list if trip is near water;

6. Daily logs;

7. Maps of area covered by the trip; and

8. Daily plans.

F. Initial physical forms used by wilderness campsite programs and providers that take residents on wilderness or adventure activities shall include:

1. A statement notifying the doctor of the types of activities the resident will be participating in; and

2. A statement signed by the doctor stating the individual's health does not prevent him from participating in the described activities.

G. First aid kits used by wilderness campsite programs and providers that take residents on adventure activities shall be activity appropriate and shall be accessible at all times.

H. Direct care workers hired by wilderness campsite programs and providers that take residents on wilderness/adventure activities shall be trained in a wilderness first aid course.

I. The provider shall ensure that before engaging in any aquatic activity, each resident shall be classified by the trip coordinator or his designee according to swimming ability in one of two classifications: swimmer and nonswimmer. This shall be documented in the resident's record and in the trip folder.

J. The provider shall ensure that lifesaving equipment is provided for all aquatic activities and is placed so that it is immediately available in case of an emergency. At a minimum, the equipment shall include:

1. A whistle or other audible signal device; and

2. A lifesaving throwing device.

K. A separate bed, bunk or cot shall be made available for each person.

L. A mattress cover shall be provided for each mattress.

M. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitoes.

N. Bedding shall be clean, dry, sanitary, and in good repair.

O. Bedding shall be adequate to ensure protection and comfort in cold weather.

P. Sleeping bags, if used, shall be fiberfill and rated for 0°F.

Q. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

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R. Each resident shall be provided with an adequate supply of clean clothing that is suitable for outdoor living and is appropriate to the geographic location and season.

S. Sturdy, water-resistant, outdoor footwear shall be provided for each resident.

T. Each resident shall have adequate personal storage area.

U. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other source of combustion.

V. Artificial lighting shall be provided in a safe manner.

W. All areas of the campsite shall be lighted for safety when occupied by residents.

X. Staff of the same sex may share a sleeping area with the residents.

Y. A telephone or other means of communication is required at each area where residents sleep or participate in programs.

VA.R. Doc. No. R09-1310; Filed September 24, 2008, 9:22 a.m.

## Proposed Regulation

**Titles of Regulations: 22VAC40-410. Entitlement Date in the General Relief Program (repealing 22VAC40-410-10, 22VAC40-410-20).**

**22VAC40-411. General Relief Program (adding 22VAC40-411-10 through 22VAC40-411-220).**

**22VAC40-570. General Relief (GR) Program - Locality Options (repealing 22VAC40-570-10 through 22VAC40-570-100).**

**22VAC40-640. General Relief Program - Deeming Income from Alien Sponsors (repealing 22VAC40-640-10 through 22VAC40-640-80).**

Statutory Authority: §§63.2-217 and 63.2-802 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until December 12, 2008.

Agency Contact: Mark Golden, TANF Program Manager, Department of Social Services, 7 North Eighth Street, Room 5214, Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7356, TTY (800) 828-1120, or email mark.golden@dss.virginia.gov.

Basis: Pursuant to §63.2-217 of the Code of Virginia the State Board of Social Services has authority to promulgate rules and regulations necessary for the operation of all assistance programs. Section 63.2-802 of the Code of Virginia provides for the establishment of a General Relief Program.

Purpose: General Relief provides assistance to vulnerable populations that cannot receive assistance in other programs. Some of the populations targeted by the General Relief program include children living with unrelated adults and single disabled adults. In many situations, General Relief is the only means of support available. Providing a basic level of subsistence is important for the health, safety, and welfare of disadvantaged individuals in the Commonwealth. Four regulations will be repealed. They are General Relief Program Locality Options (22VAC40-570), General Relief Program Entitlement Date (22VAC40-410), General Relief Disability Advocacy Project (22VAC40-630), and General Relief Program-Deeming Income from Alien Sponsors (22VAC40-640). The new comprehensive regulation will make the program easier to administer by local agencies and be understood by the public.

Substance: The regulation defines the different types of assistance available. The regulation provides the rules for the disability advocacy project, which will be made available to recipients who have received written notification that their SSI disability claim has been denied and they want legal representation during the appeal process. Obsolete terms, such as references to the Aid to Families with Dependent Children program, were updated.

Issues: The regulation will be an advantage to the vulnerable population that cannot receive assistance in other programs. General Relief is often the only means to support those individuals. The consolidated regulation simplifies the regulatory structure of the program. The regulation poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Social Services (Board) proposes to combine the rules for its general relief program into one regulation. At the same time, the Board proposes to repeal the four regulations that currently contain portions of these rules.

Result of Analysis. The benefits very likely exceed the costs for this proposed regulatory action.

Estimated Economic Impact. Currently, rules set by the Board for Local Departments of Social Services' participation in the general relief program are contained in four separate regulations: 22VAC40-410, 22VAC40-570, 22VAC40-630 and 22VAC40-640. Taken together, these regulations set the rules for aid given to:

Adults who are unemployable because of a medical condition,

Adults who are unemployable because of lack of training,

Adults who are employable but who live in a locality where there are no employment opportunities,

Individuals who have applied for SSI benefits but have not received them yet (any aid given in this case would be repaid if and when SSI benefits are approved) and

Children who are in the custody of unrelated adults.

The general relief program also covers burial assistance for indigent decedents.

The Board proposes to combine all rules for the general relief program into one regulation and, at the same time, repeal the four regulations that currently compose these rules. Because the Board is not proposing any changes, substantive or otherwise, to these rules, affected entities are unlikely to incur any costs on account of this regulatory action. Local Departments of Social Services, and the populations that are covered by the general relief program, will likely only benefit from having all the rules for this program in one regulation where they will be easier to find.

**Businesses and Entities Affected.** This proposes regulatory action will likely benefit any local Departments of Social Services that participate in some or all of the parts of the general relief program. Individuals who receive benefits under this program will also be (likely positively) affected. The State Department of Social Services (DSS) reports that 83 local departments participate in this program and that 3,183 individuals, on average, receive benefits through this program each month.

**Localities Particularly Affected.** Localities that participate in the general relief program will likely benefit from 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 affect 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 affect 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 Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The General Relief Program provides assistance to individuals who are not eligible for other forms of assistance and is an optional program at the local level. The proposed regulation defines the different types of assistance available, how income and resources are evaluated for aliens, how recipients can receive assistance through the disability advocacy project, and establishes the date for which eligibility for general relief begins. This action combines the provisions of four existing regulations into one comprehensive set of rules for the General Relief Program.*

**CHAPTER 411  
GENERAL RELIEF PROGRAM**

**22VAC40-411-10. Definitions.**

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

"Advocacy services" means legal services to help establish eligibility for federal disability benefits.

"Affidavit of support" or "Form I-134" means a statement of a sponsor's income, resources, and willingness to support. Form I-134 or similar form is filed with the Citizenship and Immigrant Services (USCIS) by a United States resident who sponsors an alien seeking admission to the United States as a permanent resident. The affidavit is made for the purpose of

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assuring the United States government that the sponsored alien will not become a public charge in the United States.

"Agency" means the local department of social services.

"Agency action" or "action" means action taken by the superintendents or directors or local board certifying the individual or family is eligible for maintenance or emergency assistance.

"Agency contract" means the local department of social services has an agreement with a pharmacy to provide prescription drugs for recipients of General Relief.

"Appeal process" means a review of the decision on the disability claim that can involve four steps: reconsideration, hearing before an administrative law judge, review by Appeals Council, and hearing in a federal court.

"Assistance for unattached children" means a component of the General Relief Program that can provide assistance to children who would be eligible for Temporary Assistance for Needy Families (TANF) if the relationship requirement were met.

"Assistance for unemployable individuals" means a component of the General Relief Program that can provide assistance to individuals who are unable to work because of physical or mental disability, age or lack of training, illness in the family, or home responsibilities.

"Assistance for unemployed employable individuals" means a component of the General Relief Program that can provide assistance to individuals who are not working but are able to work.

"Assistance unit" means the individual or group of individuals whose needs, income, and resources are considered in determining eligibility for a component.

"Bar association" means a professional association for attorneys.

"Clothing assistance" means a component of the General Relief Program that can be used to purchase clothing for individuals who have an emergency need.

"Component" means a specific type of assistance provided under the General Relief Program.

"Disability" means a physical or mental condition rendering a person unable to perform any meaningful work and this condition is expected to last at least 12 months or result in death.

"Disability Determination Services" means a program administered by the Virginia Department of Rehabilitative Services that makes decisions on disability claims for the Social Security Administration.

"Disability insurance benefits" means Title II of the Social Security Act that provides benefits to disabled persons who

have worked for a substantial period in employment covered by Social Security.

"Entitlement date or entitlement" means the date eligibility begins.

"Emergency medical assistance" means a component of the General Relief Program that can be used to purchase medical assistance for individuals who have an emergency need.

"Equal Access to Justice Act" means an act that allows a federal court to grant an attorney a fee for proceedings before an administrative agency.

"Food credit authorization assistance" means a component of the General Relief Program that can be used to purchase food for individuals who have an emergency need.

"Federal disability benefits" means disability insurance benefits or Supplemental Security Income.

"Foster child" means a child who is entrusted or committed to a state mandated service and the child is identified as "at risk" or "in crisis."

"General Relief Plan" means the document completed by a local department of social services to identify the components included in the General Relief Program for the locality.

"General Relief Program (GR)" means an optional program funded by state (62.5%) and local funds (37.5%) with the primary purpose of assisting individuals who do not qualify for aid in a federal category. The program is supervised by the State Department of Social Services and administered by local agencies. Each agency chooses the components and subcomponents to be included in its General Relief Program.

"Hearing before an administrative law judge" means the first level formal fair hearing of decisions of the Social Security Administration to deny federal disability benefits. The hearing is conducted by an attorney who is an official of the Social Security Administration.

"Interim assistance" means a component of the General Relief Program that can provide assistance to individuals who have applied for Supplemental Security Income (SSI), who must apply for SSI, or are appealing an SSI decision. Individuals receiving interim assistance must sign an authorization allowing the Social Security Administration to send their initial retroactive Supplemental Security Income benefits to the local agency, which then reimburses its general relief budget for the amount of financial assistance given the individuals while their Supplemental Security Income benefits were pending approval.

"Legal aid attorney" means an attorney who provides legal services at no cost to people within certain income guidelines.

"Maximum for the locality" means the amount of reimbursable assistance applicable to some components based

on the agency group. Agencies are placed in one of three groups based on shelter expenses in the area.

"Maintenance payments" or "maintenance" means ongoing financial assistance from the general relief program.

"Monthly maximum" means the dollar amount of assistance specified in the General Relief Plan for some components.

"Ongoing medical assistance" means a component of the General Relief Program that can be used to provide individuals continuing medical assistance. The component is composed of 10 subcomponents including prescription drugs.

"Permanent resident status" means having been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

"Private attorney" means an attorney engaged in the private practice of law for which a fee is charged.

"Provider" means an attorney, or an individual working under the supervision of an attorney legally allowed to do so, who provides assistance in establishing an individual's eligibility for federal disability benefits.

"Recipient" means an individual who is receiving interim assistance.

"Reconsideration" means a review of the disability claim by the Disability Determination Services.

"Reimbursable" means the amount an assistance unit can receive per month for which the state/local match is available.

"Rent/house payments" means a subcomponent of the shelter assistance component that can be used to pay housing expenses.

"Recoupment" means the amount reimbursed to the general relief or state and local foster care funds from an individual's retroactive Supplemental Security Income benefits for assistance to that individual while approval for federal disability benefits was pending approval.

"Review by the Appeals Council" means a review of the decisions of the administrative law judge by a review unit of the Social Security Administration. The Appeals Council either decides the case or issues an order returning it to an administrative law judge for further review.

"Shelter assistance" means a component of the General Relief Program that can be used to provide for the shelter needs of individuals. The component's two subcomponents are rent/house payments and utility payments.

"Sponsor" means a person, or any public or private agency or organization, that executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry into the United States as a permanent resident.

"Sponsored alien" means an immigrant who due to the likelihood of his becoming a public charge would have been excluded from lawful admission into the United States. As a condition of this immigrant's admission, a person or public or private agency or organization executed an affidavit of support or similar agreement guaranteeing the federal, state, and local governments that the immigrant would not become a public charge.

"Standard of assistance" means the amount of reimbursable assistance based on the size of the assistance unit and the local department of social services group. Local agencies are placed in one of three groups based on shelter expenses in the area.

"Standard of assistance at 90% of need" means the amount of reimbursable assistance applicable to some components based on the size of the assistance unit and the agency group. Agencies are placed in one of three groups based on shelter expenses in the area.

"Subcomponent" means a part of a component.

"Supplemental Security Income" means Title XVI of the Social Security Act that provides benefits to a disabled person based on financial need.

"Temporary Assistance for Needy Families" (TANF) means the federal program administered by the Virginia Department of Social Services that provides assistance for families with children.

"United States Citizenship and Immigration Services (USCIS)" is a branch of the United States Department of Homeland Security delegated authority to enforce the Immigration and Nationality Act and all other laws relating to the immigration and naturalization of aliens.

"Utility payments" means a subcomponent of the shelter assistance component that can be used to pay for items, such as electricity, oil, water, and natural gas.

## **22VAC40-411-20. General Relief Plan.**

The General Relief Program is an optional program designed to provide assistance, either maintenance or emergency, that cannot be provided through other means. Local departments of social services that operate a General Relief Program may offer one or more components. Each local department of social services must submit a plan to the Virginia Department of Social Services indicating which components are operated.

## **22VAC40-411-30. Assistance for unemployed employable individuals.**

An agency electing to provide this component will specify in its General Relief Plan the types of assistance units served. The choices are:

1. Parents and their minor children;

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2. A parent and minor children;
3. A married couple with no children;
4. One individual; or
5. An unmarried pregnant woman.

## **22VAC40-411-40. Assistance for unemployable individuals.**

An agency electing to provide this component will specify in its General Relief Plan the amount of assistance that can be received by an assistance unit in 12 consecutive months. The choices are:

1. The standard of assistance at 90% of need times three;
2. The standard of assistance at 90% of need times six;
3. The standard of assistance at 90% of need times nine; or
4. The standard of assistance at 90% of need times 12 or the maximum for the locality times 12.

## **22VAC40-411-50. Ongoing medical assistance.**

A. An agency electing to provide this component will specify in its General Relief Plan the amount of assistance that can be received by an assistance unit in 12 consecutive months. The choices are:

1. Three times the monthly maximum;
2. Six times the monthly maximum;
3. Nine times the monthly maximum; or
4. Twelve times the monthly maximum.

B. An agency electing to provide for the purchase of prescription drugs will specify in its General Relief Plan whether recipients are required to obtain drugs at a pharmacy with an agency contract. The choices are:

1. Recipients are not required to buy prescription drugs from a contracted pharmacy; or
2. Recipients are required to buy prescription drugs from a contracted pharmacy.

## **22VAC40-411-60. Interim assistance.**

An agency that elects to provide this component but does not elect to provide assistance for unemployable individuals will specify in its General Relief Plan whether interim assistance will be restricted to assistance units with an individual with a disability that will last 12 months, has lasted 12 months, or will result in death. The choices are:

1. Assistance will not be restricted; or
2. Assistance will be restricted.

## **22VAC40-411-70. Assistance for unattached children.**

An agency electing to provide this component will specify in its General Relief Plan the amount of assistance that can be received by an assistance unit in 12 consecutive months. The choices are:

1. The standard of assistance at 90% of need times three;
2. The standard of assistance at 90% of need times six;
3. The standard of assistance at 90% of need times nine; or
4. The standard of assistance at 90% of need times 12 or the maximum for the locality times 12.

## **22VAC40-411-80. Food credit authorization assistance.**

An agency electing to provide this component will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:

1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or
2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.

## **22VAC40-411-90. Shelter assistance.**

A. An agency electing to provide this component will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:

1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or
2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.

B. An agency electing to provide rent/house payments will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:

1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or
2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.

C. An agency electing to provide utility payments will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:

1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or
2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.

**22VAC40-411-100. Emergency medical assistance.**

A. An agency electing to provide this component will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:

1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or
2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.

B. An agency electing to provide prescription drugs will specify in its General Relief Plan whether recipients are required to obtain drugs at a pharmacy with an agency contract. The choices are:

1. Recipients are not required to buy prescription drugs from a contracted pharmacy; or
2. Recipients are required to buy prescription drugs from a contracted pharmacy.

**22VAC40-411-110. Clothing assistance.**

An agency electing to provide this component will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:

1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or
2. Assistance will be provided for a maximum of one to 12 months.

**22VAC40-411-120. Entitlement date.**

When an individual or family has been found by agency action to be eligible, entitlement shall begin no later than the first day of the month following the month of application provided the individual or family meets all eligibility conditions at that time. In the following situations, the date of entitlement shall be the first of the month in which the application was made:

1. Action is taken during the month of application.
2. Action is taken in a month later than the month of application:
  - a. For reasons beyond the control of the applicant as determined by the agency; and
  - b. The applicant received general relief maintenance from another locality in Virginia for the month prior to the month of application.

**22VAC40-411-130. Disability advocacy referral.**

The agency electing to provide disability advocacy services will identify recipients of the interim assistance component of

general relief who have received written notification from the Social Security Administration that their disability claims at the application or reconsideration level have been denied. Within five working days after the identification, the agency will send letters to the interim assistance recipients explaining advocacy services, offering to refer them to advocacy providers for legal representation during the appeal process, providing information on how the appeal would affect their general relief benefits, and advising them that they have five days from the receipt of this letter to contact the agency requesting advocacy services.

If the interim assistance recipient chooses to participate in the Disability Advocacy Project, he will be allowed to select a provider from a list of qualified advocacy providers with whom the agency has contracts or be allowed to select another provider if that provider meets the qualifications and agrees to enter into a contract with the agency.

The agency will have the interim assistance recipient sign a Confidentiality Form (VDSS Form 032-01-040/2) giving the agency permission to refer the recipient to the selected provider.

Within five working days after the selection, a referral letter will be sent by the agency to the selected advocacy provider.

**22VAC40-411-140. Duties of the disability advocacy provider.**

Advocacy providers will perform the following services:

1. Within five working days of receipt of a referral letter from the agency, send a letter to the interim assistance recipient or the child's representative, acknowledging the referral and instructing the recipient or child's representative to protect the filing date by filing a Request for Reconsideration or Request for a Hearing with the Social Security Administration within 60 days of the date of his denial notice.
2. Contact the interim assistance recipient or child's representative by mail and telephone, if necessary, to schedule an appointment for an interview. If the provider cannot contact the recipient or the recipient does not keep the appointment, the provider will promptly notify the agency.
3. During the interview with the interim assistance recipient or child's representative, provide legal advice and counsel regarding federal disability benefits and the appeal process. The provider will assess the potential eligibility of the recipient or child for federal disability benefits. The decision whether to proceed or not proceed in the appeal process must be made by the recipient or the child's representative after receiving legal advice from the provider. The recipient or the child's representative must request the services of the advocacy provider by signing

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the Social Security Form SSA-1696-U4 under the Appointment of Representative section.

4. Within 15 working days of the initial interview with the recipient or child's representative, send a notification letter to the recipient or child's representative with a copy to the agency stating whether or not the provider will accept this case for legal representation.

5. If the provider agrees to provide advocacy services, sign Social Security Form SSA-1696-U4 under the Acceptance of Appointment and Waiver of Fee sections. Copies of the form will be sent within five working days to the Social Security Administration and to the agency.

6. Assist in the completion and timely filing of any necessary Social Security forms requesting a reconsideration, hearing, or review of the hearing decision.

7. Assist in obtaining and using medical, social, vocational evidence, or expert testimony that may substantiate the presence and severity of the disability.

8. Assist the recipient in making and keeping appointments for examinations.

9. Prepare for and adequately represent the recipient or child at interviews, hearings, or appeals related to application for Supplemental Security Income.

10. Notify the recipient or the child's representative of any denial and the right to appeal to the next level in the appeal process.

11. Notify the agency of any denial and the recipient's or child's representative's decision to proceed or not proceed to the next level in the appeal process.

12. Notify the recipient, the child's representative, and the agency when advocacy services have ended.

## **22VAC40-411-150. Disability advocacy contracts.**

Agencies shall contract with licensed legal aid or private attorneys or advocates working under the supervision of an attorney who may lawfully do so to provide legal representation in the appeal process. The providers must have previously provided successful representation to disability claimants during the reconsideration, administrative law judge hearing, Appeals Council, or federal district court levels of the federal disability adjudication process.

Qualified attorneys will be recruited by agencies giving written notice to their local legal aid and bar associations that contracts for legal representation of interim assistance recipients and foster children in the federal disability benefits appeal process will be available.

## **22VAC40-411-160. Disability advocacy disbursement.**

To receive payment, the advocacy provider must submit a petition and copy of the favorable Social Security

Administration decision to the agency within 60 days of such a decision. Disbursement for legal representation will be made by the agency within 20 working days after the agency receives the initial Supplemental Security Income payment due the recipient or child.

No disbursement will be made unless the following have occurred:

1. The agency referred the recipient or child's representative for legal representation;

2. The recipient or child's representative requested the legal representation by signing the Appointment of Representative section of Social Security Form SSA-1696-U4;

3. The advocacy provider signed the Acceptance of Appointment and Waiver of Fee sections of Social Security Form SSA-1696-U4; and

4. The agency received the initial Supplemental Security Income payment for the recipient or child.

No disbursement will be made for legal services given before the date of the agency's referral letter. Providers shall not require from the recipient or child's representative prepayment of any fees, costs, or disbursement.

The disbursement made by the agency will represent payment in full for all legal services to the recipient or child in this process with no further obligation on the part of the state or local department of social services, the recipient, nor the child's representative.

Neither the recipient, the child's representative, the State Department of Social Services, nor local agency shall be obligated to pay any additional fees, costs, or disbursement related to the provision of legal services in the appeal process including, but not limited to, payment for medical, psychological, or vocational consultations obtained to substantiate the disability claim. Under most circumstances, if preapproved by Disability Determination Services, the Social Security Administration will cover the cost of these consultations.

Contracting attorneys will agree to waive their right to legal fees paid by the Social Security Administration from the initial check for retroactive disability insurance benefits due the recipient or child should he be found eligible for both disability insurance benefits and Supplemental Security Income. An award for attorney's fees under the Equal Access to Justice Act will not be required to be waived.

The provider's fee will be paid entirely from the recoupment from the initial Supplemental Security Income payment for state and local financial assistance given the recipient or child while the Supplemental Security Income application was pending approval. The fee per favorable decision at the reconsideration level will be \$300; at the hearing before an

administrative law judge, \$600; and at the Appeals Council or federal district court, \$750. The fee may in no event exceed the recoupment for the state and local assistance paid.

**22VAC40-411-170. Alien three-year limit.**

For a period of three years from the month the United States Citizenship and Immigration Services (USCIS) grants the alien permanent resident status, the income and resources of the sponsor and the sponsor's spouse if they are living together shall be considered to be the unearned income of the alien.

The spouse's income and resources will be counted even if the sponsor and spouse married after the agreement to sponsor was signed.

**22VAC40-411-180. Alien program ineligibility.**

Any alien sponsored by a public or private agency or organization shall be ineligible for general relief for a period of three years following entry unless the sponsored alien can provide documentation that the sponsor no longer exists or is unable to meet the alien's needs.

If a sponsored alien has been found ineligible for Temporary Assistance for Needy Families or Supplemental Security Income due to sponsorship, eligibility for general relief does not exist.

**22VAC40-411-190. Responsibility of alien.**

A sponsored alien is responsible for obtaining the cooperation of his sponsor and supplying the local department of social services with any information and documentation necessary to determine the alien's eligibility for general relief benefits.

**22VAC40-411-200. Income of sponsor deemed to a sponsored alien.**

The gross amount (with certain deductions) of earned and unearned income of the sponsor and the sponsor's spouse if living together shall be considered available as unearned income available to the alien or aliens being sponsored. Items that will be deducted from the sponsor's income are:

1. 20% of net earned income not exceeding \$175;
2. The standard of assistance (at 100% of need) for the sponsor and those individuals living in the household who the sponsor claims as dependents on his federal income tax statement excluding any members of the assistance unit;
3. Any amounts paid by the sponsor or the sponsor's spouse to individuals not living in the household who are claimed by him as dependents on his federal income tax statement; and
4. Any payments of alimony or child support for individuals not living in the household.

**22VAC40-411-210. Resources of sponsor deemed to a sponsored alien.**

The resources of the sponsor and the sponsor's spouse determined to be available to the alien shall be the total amount of their nonexempt resources reduced by \$1,500.

**22VAC40-411-220. Exception of deeming.**

The deeming of a sponsor's income and resources is not applicable to any alien who:

1. Entered the United States as a refugee, parolee, or political asylee;
2. Is a Cuban or Haitian entrant;
3. Is sponsored by a person receiving Temporary Assistance for Needy Families, Supplemental Security Income, or general relief;
4. Is an Amerasian from Vietnam; or
5. Is the spouse of the sponsor.

VA.R. Doc. No. R08-978; Filed September 23, 2008, 1:38 p.m.



**TITLE 24. TRANSPORTATION AND MOTOR VEHICLES**

**DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Department of Rail and Public Transportation is claiming an exemption from the Administrative Process Act in accordance with §2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

**Titles of Regulations:** **24VAC25-10. Policy and Procedures for Rail Industrial Access Program (repealing 24VAC25-10-10).**

**24VAC25-20. Policy and Procedures for Railroad Preservation Program (repealing 24VAC25-20-10).**

**Statutory Authority:** §§33.1-221.1:1 and 33.1-391.5 of the Code of Virginia.

**Effective Date:** October 13, 2008.

**Agency Contact:** Jennifer Pickett, Public Information Officer, Department of Rail And Public Transportation, 1313 E. Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-7432, FAX (804) 225-3664, or email jennifer.pickett@drpt.virginia.gov.

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## Summary:

*This action repeals the regulations governing the Rail Industrial Access Program and the Railroad Preservation Program.*

V.A.R. Doc. No. R09-1614; Filed September 15, 2008, 2:40 p.m.

## COMMONWEALTH TRANSPORTATION BOARD

### Final Regulation

**REGISTRAR'S NOTICE:** The following regulation is exempt from the Administrative Process Act in accordance with §2.2-4006 A 2, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority. The Department of Transportation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 24VAC30-16. Internal Audit Charter (repealing 24VAC30-16-10).

**Statutory Authority:** §§2.2-1601 and 33.1-8 of the Code of Virginia.

**Effective Date:** November 12, 2008.

**Agency Contact:** Bradley Gales, Internal Audit Director, Department of Transportation, 1401 E. Broad Street, 14th Floor Annex, Richmond, VA 23219, telephone (804) 786-2825, or email bradley.gales@vdot.gov.

## Summary:

*This action repeals the regulation governing VDOT's Internal Audit Division.*

V.A.R. Doc. No. R09-1633; Filed September 22, 2008, 2:46 p.m.

## DEPARTMENT OF TRANSPORTATION

### Proposed Regulation

**Title of Regulation:** 24VAC30-73. Access Management Regulations: Minor Arterials, Collectors, and Local Streets (adding 24VAC30-73-10 through 24VAC30-73-170).

**Statutory Authority:** §33.1-198.1 of the Code of Virginia.

## Public Hearing Information:

October 28, 2008 - 1 p.m. - (Richmond) John Tyler Community College, Chester Campus, Bird Hall, Room B124, Chester, VA

October 30, 2008 - 1 p.m. - (Staunton) Augusta County Government Center, Supervisors' Board Room, Verona, VA

November 5, 2008 - 10 a.m. - (Northern Virginia) Virginia Department of Transportation, Northern

Virginia District Office, Fairfax Conference Room, 1st Floor, Chantilly, VA

November 12, 2008 - 1 p.m. - (Dublin (West of Blacksburg) New River Community College, Edwards Hall, Room 206, Dublin, VA

**Public Comments:** Public comments may be submitted until December 15, 2008.

**Agency Contact:** Paul Grasewicz, AICP, Access Management Program Administrator, Department of Transportation, Maintenance Division, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-0778, FAX (804) 662-9405, or email paul.grasewicz@vdot.virginia.gov.

**Basis:** Chapters 863 and 928 of the 2007 Acts of Assembly (HB 2228 and SB 1312, respectively) amended §§33.1-13, 33.1-198 and 33.1-199 of the Code of Virginia, and added §33.1-198.1 to the Code of Virginia. The legislation requires the Commonwealth Transportation Commissioner to develop comprehensive highway access management regulations and standards.

In response to this directive, regulations (Access Management Regulations (12/07)) were drafted, along with related access management design standards for entrances and intersections. The regulations and design standards were to be used to manage the location, number, and spacing and design of entrances and intersections, including median openings, turn lanes, traffic signals, and interchanges on the systems of state highways.

Although initial promulgation of the regulations was exempt from the Administrative Process Act (APA) (§2.2-4000 et seq. of the Code of Virginia), the legislation directed the commissioner to solicit and consider public comment in their development. The commissioner was further directed by the legislation to publish the regulations no later than December 31, 2007, to be effective July 1, 2008.

These new access management regulations and design standards were to replace and supersede the Minimum Standards of Entrances to State Highways (24VAC30-71) and Part IV, Entrance Permits, of the Land Use Permit Manual (24VAC30-150).

The mandate to develop and promulgate access management regulations is new, but the regulation of entrances is not. The Highway Commission, predecessor to the Commonwealth Transportation Board, originally established minimum standards for entrances in 1946. Part IV of the Land Use Permit Manual (24VAC30-150), along with the Minimum Standards of Entrances to State Highways (24VAC30-71), served as the basis for the Access Management Regulations (12/07) and the access management design standards for entrances and intersections.

During the 2008 General Assembly session, Chapters 274 and 454 were enacted to provide that the Access Management

Regulations (12/07) be promulgated in phases. The first phase (initial promulgation of regulations applicable to highways with a functional classification as a principal arterial) was exempt from the APA, and the regulations went into effect July 1, 2008. Subsequent phases (promulgation of regulations applicable to highways classified as a minor arterials, collectors, and local streets) are subject to the APA and will go into effect October 1, 2009. The legislation provided that the general notice concerning proposed Access Management Regulations published in The Virginia Register on October 15, 2007, shall be considered a valid Notice of Intended Regulatory Action pursuant to the APA for promulgation of this second phase.

To accommodate the mandate of Chapters 274 and 454 of the 2008 Acts of Assembly for promulgation of the first phase of regulations, VDOT revised 24VAC30-72-30 of the Access Management Regulations (12/07) and the related access management design standards for entrances and intersections to remove language related to minor arterials, collectors, and local streets. In response to these directives, the Access Management Regulations: Principal Arterials and the related access management design standards for entrances and intersections for principal arterials only apply to highways with a functional classification of principal arterial. The Access Management Regulations: Principal Arterials and the related access management design standards for entrances and intersections for principal arterials went into effect July 1, 2008.

The access management design standards for principal arterials are included as a new Appendix F in the Road Design Manual, which are incorporated by reference in the final Access Management Regulations: Principal Arterials. Access management design standards for minor arterials, collectors, and local streets are included as new Appendix G in the Road Design Manual, which are incorporated by reference in the proposed Access Management Regulations: Minor Arterials, Collectors, and Local Streets. They are available at <http://www.vdot.virginia.gov/accessmgt/>.

To satisfy the second phase of the promulgation of access management regulations in accordance with Chapters 274 and 454 of the 2008 Acts of Assembly, VDOT is publishing the proposed Access Management Regulations: Minor Arterials, Collectors, and Local Streets, which include the related access management design standards to be applicable to highways with a functional classification of minor arterial, collector, and local. These design standards are incorporated by a reference in the regulations to the Road Design Manual, an approach which was used previously when the Access Management Regulations: Principal Arterials were published. These proposed regulations are being processed in accordance with the APA and are mandated to go into effect October 1, 2009, after their approval by the commissioner. The Commonwealth Transportation Board will need to

repeal the Minimum Standards of Entrances to State Highways (24VAC30-71) prior to the October 1, 2009, effective date. Minor revisions will also be necessary to the General Rules and Regulations of the Commonwealth Transportation Board (24VAC30-20), since these regulations refer to the Minimum Standards and regulation of entrances.

Purpose: Section 33.1-198.1 of the Code of Virginia directs the commissioner to develop comprehensive highway access management regulations and standards with the purpose to preserve and improve the efficient operation of the systems of state highways through the regulation of access to state highways. The final Access Management Regulations: Principal Arterials, proposed Access Management Regulations: Minor Arterials, Collectors, and Local Streets, and related access management design standards for entrances and intersections were prepared in response to this legislative directive.

The legislation declares it to be in the public interest that access management regulations and design standards for entrances and intersections be developed and implemented to enhance the operation and safety of the systems of state highways in order to protect the public health, safety, and general welfare while ensuring that private property is entitled to reasonable access to the systems of state highways. The stated goals for the access management regulations and design standards are to:

1. Reduce traffic congestion and impacts to the level of service of highways, leading to reduced fuel consumption and air pollution;
2. Enhance public safety by decreasing traffic crash rates;
3. Support economic development in the Commonwealth by promoting the efficient movement of people and goods;
4. Reduce the need for new highways and road widening by improving the performance of the existing systems of state highways; and
5. Preserve public investment in new highways by maximizing their performance.

#### Note on Functional Classification

Functional classification means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the VDOT Commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose for through traffic movement vs. providing access to property. The functional classification system groups highways into three basic categories identified as (i) arterial, with two subclasses of "principal" and "minor," with the primary function to provide through-movement of traffic; (ii) collector, with the function of supplying a combination of

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through-movement and access to property; and (iii) local, with the primary function of providing access to property.

This regulation applies to minor arterials, collectors, and local streets. Minor arterials interconnect with and augment the principal arterial system which serves traffic of statewide and regional importance. Minor arterials distribute traffic to smaller geographic areas, providing service between and within communities.

Collectors provide land access service and traffic circulation by distributing trips throughout the community to the ultimate destination. Conversely, collectors also collect traffic from local streets in residential neighborhoods and help channel it into the arterial system.

Local streets comprise all facilities that are not collectors or arterials. Local streets serve primarily to provide direct access to abutting land and help disperse traffic.

Maps of the minor arterials, collectors, and local streets by locality will be available at <http://www.vdot.virginia.gov/> prior to the effective date of the regulation.

**Substance:** The intent of the final Access Management Regulations: Principal Arterials, proposed Access Management Regulations: Minor Arterials, Collectors, and Local Streets, and the related access management design standards for entrances and intersections is to enhance and improve the operation and safety of the systems of state highways and the goals are to: (i) reduce traffic congestion and impacts to the level of service of highways, leading to reduced fuel consumption and air pollution; (ii) enhance public safety by decreasing traffic crash rates; (iii) support economic development in the Commonwealth by promoting the efficient movement of people and goods; (iv) reduce the need for new highways and road widening by improving the performance of the existing systems of state highways; and (v) preserve public investment in new highways by maximizing their performance.

Generally, this regulation combines content from the existing Minimum Standards of Entrances to State Highways and Part IV of the Land Use Permit Manual. A Technical Advisory Committee composed of personnel from VDOT's engineering and planning divisions and the Virginia Transportation Research Council, plus representatives from the VDOT districts and residencies, reviewed access management regulations and standards from many different sources to compile the new regulations and related design standards mandated by the legislature. These sources included access management regulations and standards from other states (such as New Mexico, Maryland, North Carolina, Florida, and Michigan), as well as information from the Transportation Research Board (TRB), the Federal Highway Administration (FHWA), the Institute of Transportation Engineers (ITE), and the American Association of State Highway and Transportation Officials (AASHTO).

In addition, a Policy Committee, comprised of representatives from the Home Builders Association of Virginia, Virginia Association of Commercial Real Estate, Virginia Association of Counties, the Virginia Section of the Institute of Transportation Engineers, and the Piedmont Environmental Council, as well as from VDOT management and the Office of the Secretary of Transportation, evaluated and refined the Access Management Regulations and the access management design standards for all VDOT highways (principal and minor arterials, collectors, and local streets) with input from their organizations.

The Access Management Regulations: Minor Arterials, Collectors, and Local Streets contain definitions of pertinent words and terms, information on access management principles, administration of the permit process (how to obtain a permit, making appeals and requesting exceptions), general provisions concerning entrances, private and commercial entrance requirements, entrance design rules, cost responsibilities, commercial entrance access management requirements, coordination with local governments, tenure of entrances, and documents incorporated by reference. The access management design standards for entrances and intersections that are included in the Road Design Manual address the following topics: definitions of pertinent words and terms; access management concepts; functional classifications of state highways; design principles and spacing standards for intersections, entrances, traffic signals and median openings; sight distance standards; turning lane criteria; and design principles concerning private and commercial entrances.

Pursuant to Chapters 274 and 454 of the 2008 Acts of Assembly, the Access Management Regulations: Principal Arterials apply to highways with a functional classification of principal arterial, and the Access Management Regulations: Minor Arterials, Collectors, and Local Streets apply to highways with a functional classification of minor arterial, collector, and local.

**Issues:** The implementation of this regulation will be advantageous to the residents of Virginia. Access management regulations and standards can help reduce traffic congestion and its impact on a highway's level of service. These regulations can reduce traffic crash rates, resulting in increased public safety, fewer injuries and fatalities, and less property loss. A California study found that improved access control reduced crash rates by 42% on rural highways, and a Minnesota study indicated a direct and statistically significant correlation between crash rates and the number of driveway entrances. This suggests that implementation of the regulations and standards can reduce the personal and fiscal costs of crashes to Virginians.

Access management regulations and standards also promote more efficient movement of goods and people that will support state, regional and local economic development

efforts. For businesses, well access-managed corridors can operate at higher speeds, increasing the market area of a business and providing better customer exposure. The reduced delay associated with well access-managed roads can result in lower transportation costs and shorter delivery times for businesses. In addition, the Urban Land Institute's Shopping Center Development Handbook states that "poorly designed entrances and exits not only present a traffic hazard, but also cause congestion that can create a negative image of the center."

At a micro level, sharing entrances can lead to lower costs per entrance applicant, and vehicular and pedestrian connections between properties can increase the customer base for neighboring businesses.

Reduced traffic congestion due to access management can lead to reduced fuel consumption and therefore reduced costs as well as lower air pollution from vehicles. Effective access management ensures that pedestrians and bicyclists face fewer and less frequent motor vehicle highway entrances, thereby making it safer to walk and cycle along the roadway.

An advantage to VDOT and, by extension, the citizens of the Commonwealth will come about as a result of the improved performance of the existing road infrastructure, reducing the need for new or wider highways and preserving the public's investment in existing and new highways.

There will be some disadvantages related to the implementation of the regulation. Industry and the public will need time to adjust and familiarize themselves with the new regulation and standards, which may in some instances result in limitations on the number of new entrances and the allowable turning movements at new entrances. Developers will need to investigate the possibility of the joint use of desired entrances with adjoining property owners in accordance with the regulations and §33.1-198 of the Code of Virginia. Complete implementation of the new regulation will require coordination among developers, state and local governments, and the public. VDOT will provide outreach and training for all interested parties to facilitate a smooth implementation of this regulation.

The time required for industry and the public to become familiar with the new regulations and standards, and the costs to VDOT and localities to conduct outreach and training, will be reduced because industry, the public, and localities should already be familiar with Access Management Regulations: Principal Arterials, which went into effect July 1, 2008, and because of the additional opportunities for involvement in development of the regulation provided by the public comment period.

To facilitate outreach, a web page (<http://www.virginia.gov/accessmgt>) was added to the VDOT website. This web page provides information on the background and purpose of the access management

legislation, access management concepts and policies, benefits that accrue from managing access to state highways, a description of key proposed regulatory provisions, the public input process, and opportunities to provide input. The proposed Access Management Regulations: Minor Arterials, Collectors, and Local Streets and related access management design standards for highways with these functional classifications will be posted on the web page and published in the Virginia Register.

Pursuant to Chapters 274 and 454 of the 2008 Acts of Assembly, the publication of the General Notice regarding Access Management Regulations in the October 15, 2007, Virginia Register served as a valid NOIRA for purposes of meeting the requirements of the APA for promulgation of access management regulations for minor arterials, collectors, and local streets.

VDOT will provide multiple opportunities for people throughout the Commonwealth to participate in the public input process. Informational workshops and public hearings are planned in different regions of the Commonwealth after the proposed regulations are made available to the public. Statewide organizations that may be interested in the proposed regulations and standards will be contacted about the opportunities for public input. Notice of the public hearings will appear in newspapers across the Commonwealth, on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)), in The Virginia Register, and on the access management web page on the VDOT website (<http://www.virginiadot.org/accessmgt>).

Once the public comment period closes, personnel from VDOT's access management, policy, engineering, and planning divisions and the Virginia Transportation Research Council, plus representatives from the VDOT districts, residencies, and regional operations will evaluate the comments and use the comments to revise the draft regulations and standards.

The final Access Management Regulations: Minor Arterials, Collectors, and Local Streets and related access management design standards for entrances and intersections will be forwarded to the commissioner for review and approval with an effective date of October 1, 2009, in accordance with the statutory deadline. The Commonwealth Transportation Board will repeal the Minimum Standards of Entrances to State Highways (24VAC30-71) effective October 1, 2009. Also, the Access Management Regulations: Principal Arterials (24VAC30-72) and Part IV Entrance Permits of the current Land Use Permit Manual (24VAC30-150) may need to be adjusted to assure consistency with the final Access Management Regulations: Minor Arterials, Collectors, and Local Streets. The regulations will proceed through the remaining steps in the APA review process and will become effective on October 1, 2009.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 863 and 928 of the 2007 Acts of Assembly and Chapters 274 and 454 of the 2008 Acts of Assembly, the Virginia Department of Transportation (VDOT) proposes to promulgate new Access Management Regulations: Minor Arterials, Collectors, and Local Streets,<sup>1</sup> which will revise and replace the existing Minimum Standards of Entrances to State Highways (24VAC30-71) and Part IV (Entrance Permits) of the existing Land Use Permit Manual (24VAC30-150). Major changes include:

1. The definition of "private entrance" is revised to include entrance to agricultural fields and entrance to communication infrastructure that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.
2. The proposed regulation establishes that the VDOT will permit reasonably convenient access to a parcel of record, but that VDOT is not obligated to permit the most convenient access or the permit applicant's preferred entrance location or entrance design.
3. Drainage pipes where private entrance driveways meet public roads will no longer be installed by VDOT at no cost. The property owners will be responsible for the installation of the pipes.
4. A deadline is included for VDOT to make a decision on an appeal from the entrance permit applicants.
5. A grandfather provision is included that locations of entrances that are approved prior to the effective date of the proposed regulations shall remain valid.
6. The proposed regulation requires that the permit applicant contact the local government to identify possible conflicts with local, state, or federal regulations and plans.
7. The proposed regulation adds a few requirements to the commercial entrance access management, including requirements on shared entrances, spacing of entrances and intersections, vehicular/pedestrian circulation between adjoining undeveloped properties, and traffic signal spacing.
8. The proposed regulation requires additional signage and certified flaggers for temporary entrances in the event that adequate sight distance is not achieved.

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

Estimated Economic Impact. "Access management" means the systematic control of the location, spacing, design, and operation of entrances, median openings, traffic signals, and interchanges for the purpose of providing vehicular access to land development in a manner that preserves the safety and

efficiency of the transportation system. Each proposed highway entrance creates a potential conflict point that impacts the safe and efficient flow of traffic on the highway. In order to balance private property interests in access to the highway and public interests of safety and mobility, the board proposed to promulgate a new Access Management Regulations: Minor Arterials, Collectors, and Local Streets, which will combine and replace the existing Minimum Standards of Entrances to State Highways (24VAC30-71) and Part IV, Entrance Permits, of the existing Land Use permit Manual (24VAC30-150). Managing access to highways can reduce traffic congestion, help maintain the levels of service, enhance public safety by decreasing traffic conflict points, support economic development by promoting the efficient movement of people and goods, reduce the need for new highways and road widening by improving the performance of existing highways, preserve the public investment in new highways by maximizing their efficient operation, and better coordinate transportation and land use decisions.

The proposed regulation establishes that the Virginia Department of Transportation will permit reasonably convenient access to a parcel of record. But VDOT is not obligated to permit the most convenient access or the permit applicant's preferred entrance location or entrance design. The proposed regulations will grandfather commercial entrance locations identified on rezoning proffered plans of development, site plans, and subdivision plats that are approved prior to the effective date of the regulations. Therefore, applicants meeting this deadline would not be required to alter the location of their previously approved entrances.

The board proposes to revise the definition of "private entrance" to include entrance to agricultural fields and entrance to communication infrastructure that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins. Since private entrances are built to a lower standard and cost less than the commercial entrances, the proposed regulation will allow the entrances with low volume of usage to be built to a lower standard at a lower cost. This proposed change will likely save money for the corresponding entrance permit applicants without causing any significant affect on public safety.

The proposed regulation requires that the permit applicant contact the local government to identify possible conflicts with local, state, or federal regulations and plans. VDOT will not approve an entrance permit for a proposed development until the development has been approved by the locality. This proposed change will help coordinate the local land development review process with VDOT's entrance permit process and will likely avoid any possible conflicts between the entrance locations that locality approves as part of their site plan or subdivision plat review and the entrance locations that VDOT approves. Since VDOT's analysis of the entrance permit design is dependent on the final design of the

development, this proposed requirement will make sure that the locality and VDOT step in the approval of the design of a land development in a proper order. The permit applicant will likely benefit from savings in time and money in the case that there is a conflict between the entrance locations approved by the locality and by VDOT. Also the site plan and subdivision plats are forwarded to VDOT for comment and approval, so VDOT can inform the locality and the applicant on the proper location and design of entrances before an entrance permit is submitted later.

The proposed regulation includes a deadline for VDOT to make a decision on an appeal from the entrance permit applicant. The district administrator will advise the permit applicant in writing regarding the decision on the appeal within 60 days of receipt of the written appeal request or a longer timeframe jointly agreed to by the parties. The current entrance permit appeal process contains no such deadlines. VDOT estimates that currently the appeal process may take 30 days to 6 months. Adding a deadline to the appeal process will assure that entrance permit applicants receive timely responses to their concerns.

The board also proposes to establish that VDOT will no longer be responsible for installing the drainage pipes where private entrance driveways meet public roads. The property owners will be responsible for the installation of the pipes. Currently, if the property owner purchases the pipe for the entrance, VDOT maintenance forces would install the pipe at no cost. According to VDOT, the average cost for pipe installation is approximately \$750 to \$1000 per private entrance. Relieving VDOT from the commitment of installing drainage pipes at entrances to private property will shift the installation cost from public construction funds onto private property owners and will provide the VDOT maintenance forces with more time for necessary roadwork. To the private property owner, this proposed change causes an increase in cost of \$750 to \$1,000. However, this increase in cost is likely not large enough to have a significant impact on the behavior of property owners.

The proposed regulation will add a few requirements to the commercial entrances access management. Firstly, the proposed regulation promotes entrance sharing so as to reduce the number of entrances to state highways. Shared entrances shall be created and designed to serve adjoining parcels unless the permit applicant submits compelling evidence that a reasonable agreement cannot be reached with adjoining property owners or that there are physical to creating a shared entrance. Although the businesses may not get the entrance that is most convenient to them, they may benefit from the shared entrance besides the savings from the construction, because shared entrances and connections between the businesses will likely make it easier for the businesses to share customers. Also, fewer roadway delays

and better traffic flow will likely preserve and even enhance the market reach of these businesses.

Secondly, the proposed regulation requires spacing of the commercial entrances and intersections on minor arterials and collectors, as well as spacing between traffic signals. The current regulations do not have such requirements. Study has shown that greater spacing is related to reduce crash rates.<sup>2</sup>

These proposed changes will likely reduce traffic congestion, which will reduce fuel consumption and air pollution; reduce traffic crashes and improve public safety; reserve critical roadway capacity and reduce the need for new highways and adding lanes to highways, which will save the taxpayer's money. At the same time, the proposed regulations respect property owners' rights to reasonable access.

The proposed regulation also requires that the permit applicant record access easements and to construct vehicular connections on a minor arterial highway, or on a collector when required by the district administrator's designee. Where appropriate, the permit applicant also shall construct pedestrian connections to the boundary lines of adjoining undeveloped properties. This proposed change will facilitate traffic circulation between adjacent properties, reduce the number of entrances to the highway, and maximize use of new signalized intersections.

The board also proposes that for temporary entrances, in the event that adequate sight distance is not achieved, additional signage that meets the Manual on Uniform Traffic Control Devices standards (see 24VAC30-73-170 D) and certified flaggers shall be used to ensure safe ingress and egress. According to VDOT, currently possible need for trained flaggers and signage is already addressed in "Virginia Work Area Protection Manual for Temporary Traffic Control."<sup>3</sup> Therefore, this proposed change will likely not cause any significant impact on the permit applicants.

**Businesses and Entities Affected.** The proposed regulation will likely affect any party that applies for an entrance permit. The public will likely benefit with reduced traffic congestion, reduced fuel consumption, and improved public safety.

**Localities Particularly Affected.** The proposed regulation will affect counties and smaller towns in which VDOT regulates access to state controlled highways. It will not affect cities, larger towns, and Henrico and Arlington Counties, which maintain and control access to their roads.

**Projected Impact on Employment.** The proposed regulation will improve traffic flow and facilitate the customers' access to the businesses near the entrances and intersections, which will likely have a positive impact on the number of people employed by these businesses.

**Effects on the Use and Value of Private Property.** The private property owners will be responsible for the installation of the drainage pipes, which will cost approximately \$750 to \$1000

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on average. On the other hand, managing access to highways will reduce traffic congestion and improve public safety, which will likely enhance the market reach of the businesses near the entrances. This will have a positive impact on the use and value of their property.

**Small Businesses: Costs and Other Effects.** The proposed regulation will reduce traffic congestion and improve public safety, which may enhance the market reach for the small businesses. Although small businesses may not get the entrance that is most convenient for them, they may receive more customers by sharing entrances and connections with other businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small businesses will likely benefit from the proposed regulations.

**Real Estate Development Costs.** The proposed regulations will affect the real estate developers who will apply for an entrance permit. The private property owners will be responsible for the installation of drainage pipes, which will cost \$750 to \$1,000 approximately. The real estate developers may not have the permit for entrance or signal that is most convenient for them. However, they will likely benefit from the reduced traffic congestion and improved safety as well as reduced construction cost.

**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> Highway is defined as a public way for purposes of vehicular travel, including the entire area within the right-of-way. Highways are classified as a principal arterial,

minor arterial, collector, or local, based on their intended function. The access management regulations for principal arterials took effect July 1, 2008.

<sup>2</sup> Source: [http://www.virginiadot.org/projects/accessmgt/Benefits\\_of\\_Access\\_Mgt.pdf](http://www.virginiadot.org/projects/accessmgt/Benefits_of_Access_Mgt.pdf).

<sup>3</sup> Source: <http://www.virginiadot.org/business/resources/1-WEBwapmCOVER.pdf>.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Department of Transportation concurs with the economic impact analysis prepared by the Department of Planning and Budget concerning the replacement regulation for the Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73).

## Summary:

*This action promulgates a new regulation; however, the proposed regulation carries over and consolidates existing regulations in the Minimum Standards of Entrances (24VAC30-71) and the entrance regulations in the Land Use Permit Manual (24VAC30-150). Items appearing in the Minimum Standards such as entrance illustrations and sight distance standards are relocated to the Road Design Manual and incorporated by reference.*

*Significant proposed changes are as follows:*

- 1. The definition of "private entrance" is revised to include entrance to agricultural fields and entrance to communication infrastructure that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.*
- 2. The proposed regulation establishes that the Department of Transportation (VDOT) will permit reasonably convenient access to a parcel of record, but that VDOT is not obligated to permit the most convenient access or the permit applicant's preferred entrance location or entrance design.*
- 3. Drainage pipes where private entrance driveways meet public roads will no longer be installed by VDOT at no cost. The property owners will be responsible for the installation of the pipes.*
- 4. A deadline is included for VDOT to make a decision on an appeal from the entrance permit applicants.*
- 5. A grandfather provision is included that locations of entrances that are approved prior to the effective date of the proposed regulations shall remain valid.*
- 6. The proposed regulation requires that the permit applicant contact the local government to identify possible conflicts with local, state, or federal regulations and plans.*
- 7. The proposed regulation adds a few requirements to the commercial entrance access management, including requirements on shared entrances, spacing of entrances and intersections, vehicular/pedestrian circulation between adjoining undeveloped properties, and traffic signal spacing.*

8. *The proposed regulation requires additional signage and certified flaggers for temporary entrances in the event that adequate sight distance is not achieved.*

CHAPTER 73

ACCESS MANAGEMENT REGULATIONS: MINOR ARTERIALS, COLLECTORS, AND LOCAL STREETS

**24VAC30-73-10. Definitions.**

"Access management" means the systematic control of the location, spacing, design, and operation of entrances, median openings, traffic signals, and interchanges for the purpose of providing vehicular access to land development in a manner that preserves the safety and efficiency of the transportation system.

"Collectors" means the functional classification of highways that provide land access service and traffic circulation within residential, commercial, and industrial areas. The collector system distributes trips from principal and minor arterials through the area to the ultimate destination. Conversely, collectors also collect traffic from local streets in residential neighborhoods and channel it into the arterial system.

"Commercial entrance" means any entrance serving land uses other than two or fewer individual private residences. (See "private entrance.")

"Commissioner" means the individual who serves as the chief executive officer of the Department of Transportation or his designee.

"Commonwealth" means the Commonwealth of Virginia.

"Crossover" or "median opening" means an opening in a nontraversable median (such as a concrete barrier or raised island) that provides for crossing and turning traffic.

"Design speed" means the selected speed used to determine the geometric design features of the highway.

"District" means each of the nine areas in which VDOT is divided to oversee the maintenance and construction on the state-maintained highways, bridges and tunnels within the boundaries of the area.

"District administrator" means the VDOT employee assigned to supervise the district.

"District administrator's designee" means the VDOT employee or employees designated by the district administrator.

"Entrance" means any driveway, street, or other means of providing for movement of vehicles to or from the highway.

"Frontage road" means a road that generally runs parallel to a highway between the highway right-of-way and the front building setback line of the abutting properties and provides access to the abutting properties for the purpose of reducing

the number of entrances to the highway and separating the abutting property traffic from through traffic on the highway.

"Functional area" means the area of the physical highway feature, such as an intersection, roundabout, railroad grade crossing, or interchange, plus that portion of the highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.

"Functional area of an intersection" means the physical area of an at-grade intersection plus all required storage lengths for separate turn lanes and for through traffic, including any maneuvering distance for separate turn lanes.

"Functional classification" means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose of providing priority to through traffic movement or adjoining property access. The functional classification system groups highways into three basic categories identified as (i) arterial, with the function to provide through movement of traffic; (ii) collector, with the function of supplying a combination of through movement and access to property; and (iii) local, with the function of providing access to property.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Intersection" means any at-grade connection with a highway, including two highways or an entrance and a highway.

"Legal speed limit" means the speed limit set forth on signs lawfully posted on a highway or, in the absence of such signs, the speed limit established by Article 8 (§46.2-870 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia.

"Level of service" means a qualitative measure describing the operational conditions within a vehicular traffic stream, generally in terms of such service measures as speed, travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. "Level-of-service" is defined and procedures are presented for determining the level of service in the Highway Capacity Manual (see 24VAC30-73-170 I).

"Limited access highway" means a highway especially designed for through traffic over which abutting properties have no easement or right of light, air, or access by reason of the fact that those properties abut upon the limited access highway.

"Local streets" means the functional classification for highways that comprise all facilities that are not collectors or arterials. Local streets serve primarily to provide direct access to abutting land and to other streets.

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"Median" means the portion of a divided highway that separates opposing traffic flows.

"Minor arterials" means the functional classification for highways that interconnect with and augment the principal arterial system. Minor arterials distribute traffic to smaller geographic areas providing service between and within communities.

"Operating speed" means the speed at which drivers are observed operating their vehicles during free-flow conditions with the 85th percentile of the distribution of observed speeds being the most frequently used measure of the operating speed of a particular location or geometric feature.

"Permit" or "entrance permit" means a document that sets the conditions under which VDOT allows a connection to a highway.

"Permit applicant" means the person or persons, firm, corporation, government, or other entity that has applied for a permit.

"Permittee" means the person or persons, firm, corporation, government, or other entity that has been issued a permit.

"Preliminary subdivision plat" means a plan of development as set forth in §15.2-2260 of the Code of Virginia.

"Principal arterials" means the functional classification for major highways intended to serve through traffic where access is carefully controlled, generally highways of regional importance, with moderate to high volumes of traffic traveling relatively long distances and at higher speeds.

"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Reverse frontage road" means a road that is located to the rear of the properties fronting a highway and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and removing the abutting property traffic from through traffic on the highway.

"Right-of-way" means that property within the systems of state highways that is open or may be opened for public travel

or use or both in the Commonwealth. This definition includes those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel.

"Roadside" means the area adjoining the outer edge of the roadway. The median of a divided highway may also be considered a "roadside."

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Shared entrance" means a single entrance serving two or more adjoining parcels.

"Sight distance" means the distance visible to the driver of a vehicle when the view is unobstructed by traffic.

"Site plan" and "subdivision plat" mean a plan of development approved in accordance with §§15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia.

"Systems of state highways" means all highways and roads under the ownership, the control, or the jurisdiction of VDOT, including but not limited to, the primary, secondary and interstate highways.

"Traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and turn lanes.

"Trip" means a single or one-directional vehicle movement either entering or exiting a property; a vehicle leaving the property is one trip and a vehicle returning to the property is one trip.

"Turn lane" means a separate lane for the purpose of enabling a vehicle that is entering or leaving a highway to increase or decrease its speed to a rate at which it can more safely merge or diverge with through traffic; an acceleration or deceleration lane.

"Urban area" means an urbanized area with a population of 50,000 or more, or an urban place (small urban area) as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area. The Federal Highway Administration defines "urban area" in more detail based on the federal-aid highway law (23 USC §101).

"VDOT" means the Virginia Department of Transportation, its successor, the Commonwealth Transportation Commissioner, or his designees.

## **24VAC30-73-20. Authority to regulate entrances to highways.**

A. VDOT's authority to regulate highway entrances and manage access to highways is provided in §§33.1-13, 33.1-197, 33.1-198, 33.1-198.1, and 33.1-199 of the Code of Virginia, and its authority to make regulations concerning the use of highways generally is provided in §33.1-12 (3) of the Code of Virginia. Each proposed highway entrance creates a

potential conflict point that impacts the safe and efficient flow of traffic on the highway; therefore, private property interests in access to the highway must be balanced with public interests of safety and mobility. Managing access to highways can reduce traffic congestion, help maintain the levels of service, enhance public safety by decreasing traffic conflict points, support economic development by promoting the efficient movement of people and goods, reduce the need for new highways and road widening by improving the performance of existing highways, preserve the public investment in new highways by maximizing their efficient operation, and better coordinate transportation and land use decisions.

B. Where a plan of development with the specific location of an entrance or entrances was proffered pursuant to §15.2-2297, 15.2-2298, or 15.2-2303 of the Code of Virginia prior to October 1, 2009, such entrances shall be exempt from the spacing standards for entrances and intersections in Appendix G of the Road Design Manual (see 24VAC30-70-170 A), provided the requirements of §15.2-2307 of the Code of Virginia have been met. Entrances shown on a subdivision plat, site plan, or preliminary subdivision plat that is valid pursuant to §§15.2-2260 and 15.2-2261 and approved in accordance with §§15.2-2286 and 15.2-2241 through 15.2-2245 prior to October 1, 2009, shall be exempt from the spacing standards for entrances and intersections in Appendix G of the Road Design Manual.

C. The Commonwealth Transportation Board has the authority to designate highways as limited access and to regulate access rights to those facilities as provided in §33.1-58 of the Code of Virginia. No private or commercial entrances shall be permitted within limited access rights-of-way except as may be provided for by the regulation titled Change of Limited Access Control (24VAC30-401).

D. Notwithstanding Part IV (24VAC30-150-1680 et seq.) of the Land Use Permit Manual, after the effective implementation date as set forth in 24VAC30-73-30, the district administrators or their designees are authorized to issue private entrance permits and commercial entrance permits in accordance with the provisions of this chapter.

E. In cases where the provisions and requirements of this chapter conflict with the Land Use Permit Manual (24VAC30-150), the provisions and requirements of this chapter shall govern.

### **24VAC30-73-30. Application to minor arterials, collectors, and local streets.**

A. This chapter shall apply on October 1, 2009, to any highway with a functional classification as a minor arterial, collector, or local street. Any highway with a functional classification as a principal arterial is governed by the provisions of 24VAC30-72.

B. The commissioner shall publish maps of the Commonwealth on the VDOT website that show all highways with the above functional classifications and shall periodically update such maps.

### **24VAC30-73-40. Administrative procedures and rules for obtaining commercial and private entrance permits.**

All applications for entrance permits shall be obtained from and submitted to the district administrator's designee for the county in which the work is to be performed. The permit applicant shall submit the permit application form, and the entrance permit, if approved, will be issued in accordance with the applicable administrative rules, requirements and procedures of this chapter and the Land Use Permit Manual (24VAC30-150).

### **24VAC30-73-50. Appeal and exception procedure.**

A. The permit applicant may appeal denial or revocation or conditions imposed by a permit in writing to the district administrator with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

1. All appeals must be received within 30 days of receipt of written notification of denial or revocation or issuance of a permit with contested conditions and must set forth the grounds for the appeal and include copies of all prior correspondence with any local government official and VDOT representatives regarding the issue or issues. The permit applicant may request a meeting with the district administrator concerning the appeal and the district administrator will set a date, time, and location for such meeting.

2. After reviewing all pertinent information, the district administrator will advise the permit applicant in writing regarding the decision on the appeal within 60 days of receipt of the written appeal request or such longer timeframe jointly agreed to by the parties, with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

3. The permit applicant may further appeal the district administrator's decision to the commissioner within 30 days of receipt of written notification of the district administrator's decision. The commissioner will advise the permit applicant in writing regarding the decision on the appeal within 60 days of receipt of the written appeal request, with a copy to the district administrator and the chief administrative officer of the locality where the entrance is proposed.

B. The commissioner may grant an exception to the required sight distance after a traffic engineering investigation has been performed.

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1. If a sight distance exception is requested, the permit applicant shall provide such request in writing to the commissioner with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed and shall furnish the commissioner with a traffic engineering investigation report, prepared by a professional engineer. The methodology and format of the report shall be in conformance with requirements set forth in the Manual on Uniform Traffic Control Devices (see 24VAC30-73-170 D).

2. The commissioner will advise the permit applicant in writing regarding the decision on the sight distance exception request within 60 days of receipt of the written exception request or such longer timeframe jointly agreed to by the parties, with a copy to the district administrator's designee and the chief administrative officer of the locality where the entrance is proposed.

## **24VAC30-73-60. General provisions governing commercial and private entrances.**

A. No entrance of any nature may be constructed within the right-of-way until the location has been approved by VDOT and an entrance permit has been issued. The violation of any provision of this chapter and any condition of approval of an entrance permit shall be subject to the penalties for violations specified in the Land Use Permit Manual (24VAC30-150).

B. VDOT will permit reasonably convenient access to a parcel of record. VDOT is not obligated to permit the most convenient access, nor is VDOT obligated to approve the permit applicant's preferred entrance location or entrance design. If a parcel is served by more than one road in the systems of state highways, the district administrator's designee shall determine upon which road or roads the proposed entrance or entrances is or are to be constructed.

C. When two or more properties are to be served by the same entrance, the permit applicant shall ensure that there is a recorded agreement between the parties specifying the use and future maintenance of the entrance. A copy of this recorded agreement shall be included in the entrance permit application submitted to the district administrator's designee. The shared entrance shall be identified on any site plan or subdivision plat of the property.

D. Entrance standards established by localities that are stricter than those of VDOT shall govern.

## **24VAC30-73-70. Commercial entrance design.**

A. All commercial entrance design and construction shall comply with the provisions of this chapter and the standards in the Road Design Manual (see 24VAC30-73-170 A), the Road and Bridge Standards (see 24VAC30-73-170 C), the Road and Bridge Specifications (see 24VAC30-73-170 B), other VDOT engineering and construction standards as may

be appropriate, and any additional conditions, restrictions, or modifications deemed necessary by the district administrator's designee to preserve the safety, use and maintenance of the systems of state highways. Entrance design and construction shall comply with applicable guidelines and requirements of the Americans with Disabilities Act of 1990 (42 USC §12101 et seq.). Ramps for curb sections shall be provided as required in §15.2-2021 of the Code of Virginia. The standard drawing for depressed curb ramp as shown in the Road and Bridge Standards (see 24VAC30-73-170 C) shall be utilized in the design.

1. In the event an entrance is proposed within the limits of a funded roadway project that will ultimately change a highway, the permit applicant may be required to construct, to the extent possible, entrances compatible with the roadway's ultimate design.

2. All entrance design and construction shall accommodate pedestrian and bicycle users of the abutting highway in accordance with the Commonwealth Transportation Board's "Policy for Integrating Bicycle and Pedestrian Accommodations" (see 24VAC30-73-170 H).

3. All entrance design and construction shall accommodate transit users of the abutting highway where applicable and provide accommodations to the extent possible.

4. Based on the existing and planned developments, the district administrator's designee will determine the need for curb and gutter, sidewalks, or other features within the general area of the proposed entrance in accordance with the requirements of this chapter and the design standards in Appendix G of the Road Design Manual (see 24VAC30-73-170 A).

5. Sites accessed by an entrance shall be designed so as to prevent unsafe and inefficient traffic movements from impacting travel on the abutting highway. At the request of the district administrator's designee, the permit applicant shall furnish a report that documents the impact of expected traffic movements upon the function of the abutting highway during the peak hours of the abutting highway.

B. It is essential that entrance and site design allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways.

1. The permit applicant shall supply sufficient information to demonstrate to the satisfaction of the district administrator's designee that neither the entrance, nor the proposed traffic circulation patterns within the parcel, will compromise the safety, use, operation, or maintenance of the abutting highway. A rezoning traffic impact statement or a site plan/subdivision plat supplemental traffic analysis submitted for a proposed development of a parcel in accordance with the Traffic Impact Analysis Regulations

(24VAC30-155) may be used for this purpose, provided that it adequately documents the effect of the proposed entrance and its related traffic on the operation of the highway to be accessed.

2. If the proposed entrance will cause the systems of state highways to experience degradation in safety or a significant increase in delay or a significant reduction in capacity beyond an acceptable level of service, the applicant shall be required to submit a plan to mitigate these impacts and to bear the costs of such mitigation measures.

3. Proposed mitigation measures must be approved by the district administrator's designee prior to permit approval. Mitigation measures that may be considered include but are not limited to:

- a. Construction of auxiliary lanes or turning lanes, or pavement transitions/tapers;
- b. Construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers;
- c. Installation, modification, or removal of traffic signals and related traffic control equipment;
- d. Provisions to limit the traffic generated by the development served by the proposed entrance;
- e. Dedication of additional right-of-way or easement, or both, for future road improvements;
- f. Reconstruction of existing roadway to provide required vertical and horizontal sight distances;
- g. Relocation or consolidation of existing entrances; or
- h. Recommendations from adopted corridor studies, design studies, other access management practices and principles, or any combination of these, not otherwise mentioned in this chapter.

4. If an applicant is unwilling or unable to mitigate the impacts identified in the traffic impact analysis, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

#### **24VAC30-73-80. Minimum sight distance for commercial entrances.**

A. No less than minimum intersection sight distance shall be obtained for any commercial entrance. Sight distances shall be measured in accordance with VDOT practices, and sight distance requirements shall conform to VDOT standards as described in Appendix G of the Road Design Manual (see 24VAC30-73-170 A). The legal speed limit shall be used unless the design speed is available and approved for use by VDOT.

B. The operating speed may be used in lieu of the legal speed limit in cases where the permit applicant furnishes the district administrator's designee with a speed study prepared in accordance with the Manual on Uniform Traffic Control Devices (see 24VAC30-73-170 D) methodology that demonstrates the operating speed of the segment of highway is lower than the legal speed limit and, in the judgment of the district administrator's designee, use of the operating speed will not compromise safety for either a driver at an entrance or a driver on the abutting highway.

C. VDOT may require that the vertical or horizontal alignment of the existing roadway be adjusted to accommodate certain design elements of a proposed commercial entrance including, but not limited to, median openings, crossovers, roundabouts, and traffic signals, where adjustment is deemed necessary. The cost of any work performed to adjust the horizontal or vertical alignment of the roadway to achieve required intersection sight distance at a proposed entrance shall be borne by the permit applicant.

#### **24VAC30-73-90. Private entrances.**

A. The property owner shall identify the desired location of the private entrance with the assistance of the district administrator's designee. If the minimum intersection sight distance standards specified in Appendix G of the Road Design Manual (see 24VAC30-73-180) cannot be met, the entrance should be placed at the location with the best possible sight distance as determined by the district administrator's designee. The district administrator's designee may require the property owner to grade slopes, clear brush, remove trees, or conduct other similar efforts, or any combination of these, to provide the safest possible means of ingress and egress that can be reasonably achieved.

B. The property owner shall obtain an entrance permit and, on shoulder and ditch section roads, shall be responsible for installing the private entrance in accordance with VDOT policies and engineering standards. The property owner may request VDOT to perform the stabilization of the shoulder and installation of the entrance pipe. In such cases, VDOT may install the private entrance pipe and will stabilize the shoulder at the property owner's expense. If VDOT installs these portions of the entrance, a cost estimate for the installation will be provided to the property owner; however, VDOT will bill the property owner the actual cost of installation. The property owner shall be responsible for all grading beyond the shoulder.

C. Grading and installation of a driveway from the edge of the pavement to the right-of-way line shall be the responsibility of the property owner.

D. Installation of a private entrance on a curb and gutter street shall be the responsibility of the property owner.

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E. Maintenance of private entrances shall be by the owner of the entrance, except that VDOT shall maintain:

1. On shoulder section roadways, that portion of the entrance within the normal shoulder portion of the roadway.
2. On roadways with ditches, the drainage pipe at the entrance.
3. On roadways with curb, gutter, and sidewalk belonging to VDOT, that portion of the entrance that extends to the back of the sidewalk. If a sidewalk is not present, to the back of the curb line.
4. On roadways with curb, gutter, and sidewalk not belonging to VDOT, only to the flow line of the gutter pan.
5. On roadways with shoulders, ditches, and sidewalk belonging to VDOT, that portion of the entrance that extends to the back of the sidewalk.

## **24VAC30-73-100. Commercial entrances - coordination with local governments.**

A. For all commercial entrances, the permit applicant shall contact and coordinate with appropriate local government agencies to identify possible conflicts with local, state or federal regulations and plans, including but not limited to local zoning and subdivision regulations, environmental regulations, land use plans, transportation plans, corridor studies, and access management plans.

B. If local governments have established site plan/subdivision plat approval processes for developments, VDOT will not approve a commercial entrance permit for the development prior to the local government's approval of the site plan or subdivision plat for the development. If neither a local government site plan nor a subdivision plat approval process is applicable, VDOT will not approve a commercial entrance permit for the development prior to the local government's approval of any applicable land use authorization for the development.

C. Any transportation-related funds, real property, or improvements committed to or received by a local government through the land use regulatory process does not release the applicant from fees and improvements required by VDOT. When a local government requires improvements to the abutting state highway in accordance with the locality's adopted transportation plan, VDOT may require additional improvements to ensure the safety and capacity of the proposed entrances and to manage existing entrances along the highway.

## **24VAC30-73-110. Tenure of commercial entrances.**

A. The tenure of a commercial entrance to any highway is conditional. Reconstruction, relocation, commercial entrance consolidation, or upgrading, or a combination of these, may be required at the owner's cost when the district

administrator's designee determines after review that one of the conditions listed below exists. If the necessary changes are not made, the entrance may be closed at the direction of the district administrator's designee.

1. Safety - When the entrance has been found to be unsafe for public use in its present condition because of physical degradation of the entrance, increase in motor vehicle traffic, or some other safety-related condition.

2. Use - When traffic in and out of the entrance has changed significantly to require modifications or reconstruction, or both. Such changes may include, but are not limited to, changes in traffic volume or operational characteristics of the traffic.

3. Maintenance - When the entrance becomes unserviceable due to heavy equipment damage or reclamation by natural causes.

B. VDOT will maintain the commercial entrance only within the normal shoulder of the roadway or to the flow line of the gutter pan. The owner shall maintain all other portions of the entrance, including entrance aprons, curb and gutter, culvert and drainage structures.

C. Commercial entrances may also be reviewed by the district administrator's designee when any of the following occur:

1. The property is being considered for rezoning or other local legislative action that involves a change in use of the property.

2. The property is subject to a site plan or subdivision plat review.

3. There is a change in commercial use either by the property owner or by a tenant.

4. Vehicular/pedestrian circulation between adjoining properties becomes available.

These periodic reviews are necessary to provide both the driver and other highway users with a safe and operationally efficient means of travel on state highways.

## **24VAC30-73-120. Commercial entrance access management.**

A. As commercial entrance locations and designs are prepared and reviewed, appropriate access management regulations and standards shall be utilized to ensure the safety, integrity and operational characteristics of the transportation system are maintained. The proposed commercial entrance shall meet the access management standards contained in Appendix G of the Road Design Manual (see 24VAC30-73-170 A) and the regulations in this chapter to provide the users of such entrance with a safe means of ingress and egress while minimizing the impact of such ingress and egress on the operation of the highway. As

part of any commercial entrance permit review, the district administrator's designee will determine what improvements are needed to preserve the operational characteristics of the highway, accommodate the proposed traffic and, if entrance design modifications are needed, incorporate them accordingly to protect the transportation corridor. If the location of the entrance is within the limits of an access management plan approved by the local government and VDOT, the plan should guide the district administrator's designee in determining the appropriate design and location of the entrance. Access management requirements, in addition to other regulations in this chapter, include but are not limited to:

1. Restricting commercial entrance locations. To prevent undue interference with free traffic movement and to preserve safety, entrances to the highways shall not be permitted within the functional areas of intersections, roundabouts, railroad grade crossings, interchanges or similar areas with sensitive traffic operations. Subsection B of this section provides the procedures for requesting an exception to this requirement.

2. Entrances shared with adjoining properties on minor arterials and collectors. To reduce the number of entrances to state highways, the district administrator's designee shall require that shared entrances be created and designed to serve adjoining parcels unless the permit applicant submits compelling evidence that a reasonable agreement cannot be reached with adjoining property owners or that there are physical constraints, including but not limited to topography, environmentally sensitive areas, and hazardous uses, to creating a shared entrance. A copy of the property owners' recorded agreement to share use of and maintain the entrance shall be submitted with the permit application for a shared entrance. The shared entrance shall be identified on any site plan or subdivision plat of the property. A permit applicant shall not be required to follow the procedures for an appeal set forth in 24VAC30-73-50 to receive an exception to the requirements of this subdivision.

3. Spacing of entrances and intersections. The spacing of proposed entrances and intersections shall comply with the spacing standards for entrances and intersections in Appendix G of the Road Design Manual (see 24VAC30-73-170 A) except as specified below.

a. On older, established business corridors of a locality within an urban area where existing entrances and intersections did not meet the spacing standards prior to October 1, 2009, spacing for new entrances and intersections may be allowed by the district administrator's designee that is consistent with the established spacing along the highway, provided that reasonable efforts are made to comply with the other access management requirements of this section

including restricting entrances within the functional areas of intersections, sharing entrances with and providing vehicular and pedestrian connections between adjoining properties, and physically restricting entrances to right-in or right-out or both movements.

b. Where a developer proposes a development within a designated urban development area as defined in §15.2-2223.1 of the Code of Virginia and other comparable local designations that fully incorporates principles of new urbanism and traditional neighborhood development, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) satisfaction of requirements for stormwater management, (vi) mixed-use neighborhoods, including mixed housing types, (vii) reduction of front and side yard building setbacks, and (viii) reduction of subdivision street widths and turning radii at subdivision street intersections, the district administrator's designee may approve spacing standards for entrances and intersections internal to the development that differ from the otherwise applicable spacing standards, provided that such entrances and intersections meet the intersection sight distance standards specified in Appendix G of the Road Design Manual (see 24VAC30-73-170 A).

c. Where a development's second or additional commercial entrances are necessary for the streets in the development to be eligible for acceptance into the secondary system of state highways and such commercial entrances cannot meet the spacing standards for highways, the following shall apply:

(1) For highways with a functional classification as a collector or local street, the district administrator's designee may approve spacing standards that differ from the otherwise applicable spacing standards to allow the approval of the entrance or entrances. Such commercial entrances shall be required to meet the intersection sight distance standards specified in Appendix G of the Road Design Manual (see 24VAC30-73-180).

(2) For highways with a functional classification as a minor arterial, the district administrator's designee shall, in consultation with the developer and the locality within which the development is proposed, either approve spacing standards that differ from the otherwise applicable spacing standards to allow the approval of the entrance or entrances, or waive such state requirements that necessitate second or additional commercial entrances.

4. Vehicular/pedestrian circulation between adjoining undeveloped properties. To facilitate traffic circulation

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between adjacent properties, reduce the number of entrances to the highway, and maximize use of new signalized intersections, the permit applicant shall be required on a highway with a functional classification as a minor arterial highway, and may be required by the district administrator's designee on a highway with a functional classification as a collector, to record access easements and to construct vehicular connections (which may include frontage roads or reverse frontage roads) in such a manner that affords safe and efficient future access between the permit applicant's property and adjoining undeveloped properties. Where appropriate, the permit applicant also shall construct pedestrian connections to the boundary lines of adjoining undeveloped properties.

a. Such connections shall not be required if there are physical constraints to making such connections between properties, including but not limited to topography, environmentally sensitive areas, and hazardous uses.

b. At such time that a commercial entrance permit application is submitted for the adjoining property, a condition of permit issuance shall be to extend such vehicular/pedestrian connections into the proposed development.

c. If a permit applicant cannot or does not wish to comply with this requirement, the permit applicant's entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

d. Development sites under the same ownership or consolidated for the purposes of development and comprised of more than one building site shall provide a unified access and circulation system between the sites.

5. Traffic signal spacing. To promote the efficient progression of traffic on highways, commercial entrances that are expected to serve sufficient traffic volumes and movements to require signalization shall not be permitted if the spacing between the entrance and at least one adjacent signalized intersection is below signalized intersection spacing standards in Appendix G of the Road Design Manual (see 24VAC30-73-170 A). If sufficient spacing between adjacent traffic signals is not available, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected and preserved.

6. Limiting entrance movements. To preserve the safety and function of certain highways, the district administrator's designee may require an entrance to be designed and constructed in such a manner as to physically prohibit certain traffic movements.

B. A request for an exception from the access management requirements in subsection A of this section (excluding subdivision A 2) shall follow the procedures for an appeal set forth in 24VAC30-73-50 except where the District Administrator's designee is specifically authorized to approve such request. In addition such request shall include specific and documented reasons based on a traffic engineering investigation report prepared showing that highway operation and safety will not be adversely impacted by the requested exception.

C. VDOT may work with a locality or localities on access management corridor plans. Such plans may allow for spacing standards that differ from and supersede the spacing standards for entrances and intersections in Appendix G of the Road Design Manual (see 24VAC30-73-170 A), subject to approval by the commissioner.

## **24VAC30-73-130. Drainage.**

A. Commercial and private entrances shall be constructed so as not to impair drainage within the right-of-way and so that surface water shall drain from the roadway.

B. Where deemed necessary by the district administrator's designee, a commercial entrance applicant shall provide copies of a complete drainage layout based on a drainage study by a licensed design professional. This layout shall clearly show how the permit applicant proposes to handle the drainage and run-off from applicant's development.

C. Pipe ends of culverts shall be reviewed independently by the district administrator's designee and grading or treatment at pipe ends shall minimize any hazard the pipe ends or structures may present to an errant vehicle.

## **24VAC30-73-140. Drive-in theaters.**

A drive-in theater is a specialized commercial entrance. In addition to the commercial entrance regulations set forth in this part, the conditions set forth in §33.1-12 (15) of the Code of Virginia shall be satisfied in order to construct entrances to drive-in theaters.

## **24VAC30-73-150. Temporary entrances (construction/logging entrances).**

A. Construction of temporary construction or logging entrances upon the systems of state highways shall be authorized in accordance with the provisions in the Land Use Permit Manual (24VAC30-150). The permit applicant must contact the appropriate district administrator's designee to approve the location prior to installing an entrance or utilizing an existing entrance. The district administrator's designee shall also be contacted to arrange and conduct a final inspection prior to closing a temporary construction or logging entrance. In the event that adequate sight distance is not achieved, additional signage that meets the Manual on Uniform Traffic Control Devices standards (see 24VAC30-

73-170 D) and certified flaggers shall be used to ensure safe ingress and egress.

B. Entrances shall be designed and operated in such a manner as to prevent mud and debris from being tracked from the site onto the highway's paved surface. If debris is tracked onto the highway, it shall be removed by the permittee immediately as directed by the district administrator's designee.

C. The permittee must restore, at the permittee's cost, all disturbed highway rights-of-way, including, but not limited to, ditches, shoulders, roadside and pavement, to their original condition when removing the entrance. All such restorations are subject to approval by the district administrator's designee.

### **24VAC30-73-160. Access to public waters.**

VDOT may grant the use of portions of the highway right-of-way for access to public waters upon written request from the Executive Director of the Virginia Department of Game and Inland Fisheries to the commissioner. The district administrator's designee may require that a commercial entrance permit be obtained in accordance with the provisions of this chapter for entrances that will provide access to landings, wharves, and docks.

### **24VAC30-73-170. Documents incorporated by reference.**

A. Road Design Manual (effective January 1, 2005, revised October 2009).

Note: Appendices F and G (Access Management Design Standards for Entrances and Intersections) contains the access management standards referenced in Chapters 863 and 928 of the 2007 Acts of Assembly and Chapters 274 and 454 of the 2008 Acts of Assembly.

Location and Design Division (VDOT)

Location and Design Engineer

1401 E. Broad Street

Richmond, Virginia 23219

B. 2007 Road and Bridge Specifications (effective July 2008).

Scheduling and Contract Division (VDOT)

State Contract Engineer

1401 E. Broad Street

Richmond, Virginia 23219

C. Road and Bridge Standards (effective February 1, 2001).

Location and Design Division (VDOT)

Location and Design Engineer

1401 E. Broad Street

Richmond, Virginia 23219

D. The Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition (effective December 22, 2003, revised November 2004).

Federal Highway Administration

Superintendent of Documents

U.S. Government Printing Office

P.O. Box 371954

Pittsburgh, PA 15250-7954

E. A Policy on Geometric Design of Highways and Streets, Fifth Edition, 2004.

American Association of State Highway and Transportation Officials (AASHTO)

444 North Capitol St. N.W., Suite 225

Washington, D.C. 20001

F. Change of Limited Access Control, 24VAC30-401.

Traffic Engineering Division (VDOT)

1401 E. Broad St.

Richmond, VA 23219

G. Land Use Permit Manual, 24VAC30-150.

Asset Management Division (VDOT)

1401 E. Broad St.

Richmond, VA 23219

H. Policy for Integrating Bicycle and Pedestrian Accommodations, eff. March 18, 2004.

Asset Management Division (VDOT)

1401 E. Broad St.

Richmond, VA 23219

I. Highway Capacity Manual, 2000.

Transportation Research Board

500 Fifth Street, NW

Washington, DC 20001

J. Traffic Impact Analysis Regulations, 24VAC30-155.

Asset Management Division (VDOT)

1401 E. Broad St.

Richmond, VA 23219

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# Regulations

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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

LUP-A - Land Use Permit Application (revised 1/2005).

LUP-SP - Land Use Permit Special Provisions (Notice of Permittee Liability) (revised 11/2007).

LUP-CSB - Land Use Permit Corporate Surety Bond (revised 1/2005).

LUP-LC - Land Use Permit Irrevocable Letter of Credit Bank Agreement (revised 1/2005).

LUP-SB - Land Use Permit Surety Bond (revised 1/2005).

VA.R. Doc. No. R09-1410; Filed September 24, 2008, 11:56 a.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 77 (2008)

### **DECLARATION OF A STATE OF EMERGENCY IN SUPPORT OF THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT TO RESPOND TO THE IMPACT OF HURRICANE GUSTAV AND HURRICANE IKE IN THE GULF COAST STATES**

On September 10, 2008, I expanded the state of emergency declared on August 29, 2008 for the Commonwealth in support of the Emergency Management Assistance Compact (EMAC), of which the Commonwealth of Virginia is a member, to assist the Gulf Coast States respond to and recover from the impact of Hurricane Gustav and Hurricane Ike. In accordance with §44-146.28:1, the Commonwealth will provide resources and assistance to the fullest extent possible to the impacted states that suffer significant damages from Hurricane Gustav and Hurricane Ike.

To increase the availability of gasoline in the Commonwealth of Virginia following the disruption in the normal flow of petroleum products caused by Hurricanes Gustav and Ike, on September 16, 2008, I further ordered the waiver of the Class C-3 gasoline volatility specifications in table 4 of ASTM D4814, Standard Specification for Automotive Spark Ignition Engine Fuel, as referenced in 2VAC5-420, Regulations for the Enforcement of the Virginia Gasoline and Motor Fuel Law, and allow the sale of gasoline meeting Class D-4 volatility specifications. This waiver shall be in effect immediately and through midnight on September 30, 2008.

Therefore, by virtue of the authority vested in me by §44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by §44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued August 29, 2008, wherein I proclaimed that a state of emergency exists and directed that appropriate assistance be rendered by agencies of the state government to respond to needs in the impacted states to alleviate adverse conditions created by the hurricane. Pursuant to §44-75.1 A 3 and A 4 of the Code of Virginia, I directed that the Virginia National Guard be called forth to state duty to assist in providing such aid. This shall include such functions as the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety, may find necessary.

In order to marshal all public resources and appropriate preparedness, response and recovery measures to meet this potential threat and recover from its effects, and in accordance with my authority contained in §44-146.17 of the

Emergency Services and Disaster Laws, I hereby order the following measures:

A. The limited implementation by agencies of the state and local governments of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended along with other appropriate state agency plans.

B. Limited activation of the Virginia Emergency Operations Center (VEOC) and Virginia Emergency Response Team (VERT) to coordinate the provision of assistance to the impacted Gulf States. I am directing that the VEOC and VERT coordinate state operations in support of the EMAC agreement, other mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP) and other measures that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide assistance for the preservation of life, protection of property, and implementation of recovery activities.

C. The activation, implementation and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§44-146.17(5) and 44-146.28:1 of the Code of Virginia to provide for the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, §44-146.28:1 of the Code of Virginia.

D. The authorization of the Departments of State Police, Transportation and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential commodities in and through any area of the Commonwealth in order to support the emergency conditions, regardless of their point of origin or destination.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semi trailer (4 Axles)	64,500 Pounds
Tractor-Semi trailer (5 or more Axles)	90,000 Pounds

Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All over width loads, up to a maximum of 12 feet, must follow Virginia Department of Motor Vehicles (VDMV) hauling permit and safety guidelines.

In addition to described overweight/over width transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes the vehicles enroute and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to §52-8.4 of the Code of Virginia.

The foregoing overweight/over width transportation privileges as well as the regulatory exemption provided by §52-8.4 A of the Code of Virginia, and implemented in 19VAC30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

E. This state of emergency constitutes a major medical emergency under the Rules and Regulations of the Board of Health Governing Emergency Medical Services, pursuant to Article 3.01 (§32.1-111.1 et seq.) of Chapter 4 of Title 32.1, of the Code of Virginia, Statewide Emergency Medical Services System and Services, and exemptions specified in the Rules and Regulations regarding patient transport and provider certification in disasters apply.

F. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in §44-146.28 (b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

G. Designation of members and personnel of volunteer, auxiliary and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of

the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, and others identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of §44-146.23 (a) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

H. I hereby authorize the Superintendent of Public Instruction to issue such guidance to local school divisions as may be necessary to facilitate enrollment of students displaced by Hurricane Gustav and Ike.

I. The temporary waiver, for a period of 90 days, of the enforcement by the Board of Pharmacy of statutory and regulatory provisions which, in the judgment of the Director of the Department of Health Professions, impede the ability of Virginia pharmacies to provide assistance to patients who have been displaced by the effects of Hurricane Gustav and Ike.

J. The following conditions apply to the deployment of the Virginia National Guard:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and such equipment as may be necessary or desirable to assist in alleviating the human suffering and damage to property.

2. Pursuant to §52-6 of the Code of Virginia, I authorize and direct the Superintendent of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers. These police officers shall have the same powers and perform the same duties as the regular State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by §52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard shall remain subject to military command as prescribed by §44-78.1 of the Code of Virginia and not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National

Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers Compensation benefits provided to members of the National Guard by the Virginia Workers Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers Compensation Act during the same month. If and when the time period for payment of Workers Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The costs incurred by the Department of Military Affairs in performing these missions shall be paid from state funds.

K. The activation of the statutory provisions in §59.1-525 et seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible after a natural disaster. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of Attorney General and appropriate local officials.

L. I hereby authorize the heads of executive branch agencies, acting when appropriate on behalf of their regulatory boards, to waive any state requirement or regulation for which the federal government has issued a waiver of the corresponding federal or state regulation based on the impact of Hurricane Gustav and Ike.

M. I hereby authorize the presidents of colleges and universities in the Commonwealth to waive the requirements of any state law or regulation for good cause to facilitate

enrollment of students displaced by Hurricane Gustav and Ike.

N. A state of emergency exists for the Commonwealth in support of the proper management, care and support of persons who may be displaced by Hurricane Gustav and Ike, evacuated from states impacted by Hurricane Gustav and Ike, and relocated to the Commonwealth (Evacuees). These evacuees will require a variety of services including, but not limited to health and medical care, social services, transportation and security services. I hereby order the following measures:

1. Designation of physicians, nurses, and other licensed and non-licensed health care providers and other individuals as well as hospitals, nursing facilities and other licensed and non-licensed health care organizations and other private entities by agencies of the Commonwealth, including but not limited to the Department of Health, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Emergency Management, Department of Transportation, Department of State Police, Department of Motor Vehicles, and Department of Social Services, as representatives of the Commonwealth engaged in emergency services activities, at sites designated by the Commonwealth, within the meaning of the immunity provisions of §44-146.23 (a) of the Code of Virginia, in the performance of their disaster-related mission assignments.

2. During the next 120 days, The Director of the Department of Health Professions shall issue temporary licenses, registrations, and certifications to practice in the Commonwealth, for a period not to exceed one year, to qualified health care practitioners who are displaced residents of Hurricane Gustav and Ike affected states, who hold like unrestricted licenses, registrations, or certifications in their resident states, and who may be unable to furnish or have furnished on their behalf complete documentation of their credentials and license status as otherwise required by Virginia law or regulation. The Director shall also have authority to defer the payment of licensing fees. Any license, registration or certification so issued may be revoked by for cause without a hearing by the Director.

O. Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in §44-146.24 of the Code of Virginia, other than costs defined in Item 5 of the paragraphs above pertaining to the Virginia National Guard, in performing these missions shall be paid out of the sum sufficient appropriation or other funding as approved by DPB for Disaster Planning and Operations contained in the Appropriation Act. In addition, up to \$50,000 shall be made available to VDEM for Response and Recovery Operations with the Department of Planning and Budget overseeing the release of these funds.

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# Governor

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This Executive Order shall be effective September 10, 2008, and shall remain in full force and effect until June 30, 2009, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any Federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 18th day of September, 2008.

/s/ Timothy M. Kaine  
Governor

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Proposed Consent Order - Chesapeake Marine Railway, LLC

An enforcement action has been proposed for Chesapeake Marine Railway, LLC for alleged violations in Deltaville, Virginia. The State Water Control Board proposes to issue a consent special order to Chesapeake Marine Railways, LLC, to address noncompliance with their VPDES permit. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Cynthia Akers will accept comments by email at [ecakers@deq.virginia.gov](mailto:ecakers@deq.virginia.gov), FAX (804) 527-5106 or postal mail Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060 from October 13, 2008, to November 12, 2008.

### Study to Restore Water Quality to Powell River

Announcement of an effort to restore water quality in the Powell River including the North Fork Powell River, the South Fork Powell River, Butcher Fork, Wallen Creek, Bailey's Trace, Ely Creek, Gin Creek, Lick Branch, Puckett Creek, and Stone Creek in Lee and Wise County, Virginia.

Public meeting location: Pennington Gap Town Hall, October 21, 2008, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality, Department of Mines, Minerals and Energy and the Department of Conservation and Recreation are announcing a study to restore water quality, a public comment opportunity, and public meeting.

Meeting description: First public meeting on a study to restore water quality.

Description of study: DEQ is working to identify sources of pollutants affecting the aquatic organisms and sources of bacteria contamination in the waters of the Powell River including the North Fork Powell River, the South Fork Powell River, Butcher Fork, Wallen Creek, Bailey's Trace, Ely Creek, Gin Creek, Lick Branch, Puckett Creek, and Stone Creek in Lee and Wise County, Virginia. The stream is impaired for failing to meet the aquatic life use based on violations of the general standard for aquatic organisms and failure to meet the recreational use because of fecal coliform bacteria violations, as well as violating of the E. coli standard.

During the study, the pollutants impairing the aquatic community will be identified and total maximum daily loads, or TMDLs, developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. DEQ will also determine the sources of bacteria contamination and develop a TMDL for bacteria. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, October 21, 2008, to November 21, 2008. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contacts below or on the DEQ website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

Contact for additional information: Shelley D. Williams, SWRO/TMDL Coordinator, Virginia Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4845, FAX (276) 676-4899, or email [sdwilliams@deq.virginia.gov](mailto:sdwilliams@deq.virginia.gov).

## 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 September 16, 2008. 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 Fifty (08)

Virginia's Instant Game Lottery 1070; "Match 3" (effective 9/15/08)

#### Director's Order Number Fifty-One (08)

"Match 3 20th Birthday Sweepstakes" (effective 9/15/08)

## BOARD OF PROFESSIONAL AND OCCUPATIONAL REGULATION

### Notice of Public Comment Period and Study

The Board of Professional and Occupational Regulation is conducting a study to determine whether the sign language and transliterator industry needs to be regulated. The board invites public comment on this issue. This review is being conducted pursuant to §§54.1-310 A 6 and 54.1-311 of the Code of Virginia. The board welcomes written comments on

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## General Notices/Errata

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whether the sign language and transliterator industry needs to be regulated.

Written comments will be received until 5 p.m. on Friday, December 12, 2008, and may be sent to the address below or sent to [bpor@dpor.virginia.gov](mailto:bpor@dpor.virginia.gov). Comments or questions should be sent to: Mark N. Courtney, Deputy Director, Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email [bpor@dpor.virginia.gov](mailto:bpor@dpor.virginia.gov), telephone (804) 367-8537.

Public hearings will be held on the following dates and times at the following locations:

10 a.m., Friday, October 17, 2008, City of Hampton Council Chambers, 22 Lincoln Street, 8th Floor, Hampton, VA 23669

10 a.m., Monday, October 20, 2008, Department of Professional and Occupational Regulation, 9960 Mayland Drive, 2nd Floor, Board Room #2, Richmond, VA 23233

10 a.m., Friday, October 24, 2008, Roanoke City Council Chambers, Noel C. Taylor Municipal Bldg, 215 Church Ave, SW, 4th Floor, Roanoke, VA 24011

10 a.m., Friday, November 7, 2008, #1 Courthouse Plaza, 2100 Clarendon Blvd., Arlington County Board Room 307, Arlington, VA 22201

10 a.m., Monday, November 10, 2008, Woodrow Wilson Rehabilitation Center, Watsons Activities Building, 394 Hornet Road, Fishersville, VA 22939

### STATE WATER CONTROL BOARD

#### Proposed Consent Special Order - JIM, Inc.

An enforcement action has been proposed for JIM, Inc., for alleged violations in Amelia, Virginia. The State Water Control Board proposes to issue a consent special order to JIM, Inc., to address noncompliance with underground storage tank regulations. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Cynthia Akers will accept comments by email at [ecakers@deq.virginia.gov](mailto:ecakers@deq.virginia.gov), FAX (804) 527-5106 or postal mail Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060 from October 13, 2008, to November 12, 2008.

## VIRGINIA CODE COMMISSION

### 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

### VIRGINIA SOIL AND WATER CONSERVATION BOARD

Title of Regulation: **4VAC50-20. Impounding Structure Regulations.**

Publication: 24:25 VA.R. 3538-3567 August 18, 2008

Correction to Final Regulation:

Page 3543, 4VAC50-20-50, in the paragraph following "TABLE 1 Impounding Structure Regulations":

in line 1, insert "are" before "25 feet"

in line 3, after "exempt" change "form" to "from"

VA.R. Doc. No. R06-130

**STATE WATER CONTROL BOARD**

Title of Regulation: **9VAC25-740. Water Reclamation and Reuse Regulation (adding 9VAC25-740-10 through 9VAC25-740-210).**

Publication: 24:26 VA.R. 3747-3773 September 1, 2008.

Correction to final regulation:

Page 3773, Forms, change date of form to 9/3/2008.

VA.R. Doc. No. R06-33

**SAFETY AND HEALTH CODES BOARD**

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (repealing 16VAC25-90-1910.151).**

**16VAC25-95. Medical Services and First Aid Standards for General Industry (adding 16VAC25-95-10).**

**16VAC25-175. Federal Identical Construction Industry Standards (repealing 16VAC25-175-1926.50).**

**16VAC25-177. Medical Services and First Aid Standards for the Construction Industry (adding 16VAC25-177-10).**

Publication: 25:2 VA.R. 277-291 September 29, 2008.

Correction to Proposed Regulation:

Page 289, 16VAC25-90-1910.151, reinsert text beginning with Appendix A to §1910.151—First aid kits (Non-Mandatory) through the end of the section, which was inadvertently stricken.

Page 290, 16VAC25-175-1926.50, reinsert text beginning with Appendix A to §1926.50—First aid Kits (Non-Mandatory) through the end of the section, which was inadvertently stricken.

VA.R. Doc. No. R07-05

**DEPARTMENT OF STATE POLICE**

Title of Regulation: **19VAC30-70. Motor Vehicle Safety Inspection Rules and Regulations.**

Publication: 24:8 VA.R. 987-1071 December 24, 2007

Correction to Final Regulation:

Page 1045, 19VAC30-70-470, following subdivision 15 b, second column, first line of chart should read:

Wheel size: ~~46~~ 17 inches or less - 1/4 inch (6.5mm)

VA.R. Doc. No. R08-953

**BOARD OF TOWING AND RECOVERY OPERATORS**

Title of Regulation: **24VAC27-30. General Regulations for Towing and Recovery Operators.**

Publication: 25:1 VA.R. 78-89 September 15, 2008

Correction to Final Regulation:

Page 82, 24VAC27-30-70, line 3 of subdivision 2 should read:

as defined in §46.2-100 of the Code of Virginia.

Page 82, 24VAC27-30-70, line 1 of subdivision 3 should read:

"Household goods carriers" as defined in [ ~~§46.2-100~~ §46.2-2100 ] of the Code of Virginia ..."

VA.R. Doc. No. R07-270

