VIRGINIA REGISTER OF REGULATIONS

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VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an 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 18 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. **34:8 VA.R. 763-832 December 11, 2017,** refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards,** Chair; **James A. "Jay" Leftwich,** Vice Chair; **Ryan T. McDougle; Rita Davis; Leslie L. Lilley; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; Christopher R. Nolen; Charles S. Sharp; Samuel T. Towell; Mark J. Vucci.**

Staff of the *Virginia Register:* **Karen Perrine,** Registrar of Regulations; **Anne Bloomsburg,** Assistant Registrar; **Rhonda Dyer,** Publications Assistant; **Terri Edwards,** Senior Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

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

December 2018 through December 2019

Volume: Issue	Material Submitted By Noon*	Will Be Published On
35:9	December 5, 2018	December 24, 2018
35:10	December 14, 2018 **(Friday)**	January 7, 2019
35:11	January 2, 2019	January 21, 2019
35:12	January 16, 2019	February 4, 2019
35:13	January 30, 2019	February18, 2019
35:14	February 13, 2019	March 4, 2019
35:15	February 27, 2019	March 18, 2019
35:16	March 13, 2019	April 1, 2019
35:17	March 27, 2019	April 15, 2019
35:18	April 10, 2019	April 29, 2019
35:19	April 24, 2019	May 13, 2019
35:20	May 8, 2019	May 27, 2019
35:21	May 22, 2019	June 10, 2019
35:22	June 5, 2019	June 24, 2019
35:23	June 19, 2019	July 8, 2019
35:24	July 3, 2019	July 22, 2019
35:25	July 17, 2019	August 5, 2019
35:26	July 31, 2019	August 19, 2019
36:1	August 14, 2019	September 2, 2019
36:2	August 28, 2019	September 16, 2019
36:3	September 11, 2019	September 30, 2019
36:4	September 25, 2019	October 14, 2019
36:5	October 9, 2019	October 28, 2019
36:6	October 23, 2019	November 11, 2019
36:7	November 6, 2019	November 25, 2019
36:8	November 18, 2019 **(Monday)**	December 9, 2019
36:9	December 4, 2019	December 23, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Agency Decision

Title of Regulation: **18VAC65-30. Regulations for Preneed Funeral Planning.**

Statutory Authority: §§ 54.1-2400, 54.1-2803, and 54.1-2820 of the Code of Virginia.

Name of Petitioner: Jessica Watkins.

Nature of Petitioner's Request: To amend regulations for preneed contracts to prevent circumstances, such as the closure of a funeral establishment, that result in the loss of funding for a family member's funeral.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on October 16, 2018, the board considered the petition and the comments posted on the Virginia Regulatory Town Hall. The board is convening a workgroup to look at issues relating to preneed contracts, and the request and comments will be included in the information that group considers. At this time, the decision is not to initiate rulemaking in response to the petition, but the workgroup will address the problem of defaulting on prepaid services and consider whether there are solutions that could protect other families.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4479, or email fanbd@dhp.virginia.gov.

VA.R. Doc. No. R19-02; Filed October 26, 2018, 1:34 p.m.

BOARD OF COUNSELING

Initial Agency Notice

Title of Regulation: **18VAC115-20. Regulations Governing the Practice of Professional Counseling.**

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

Name of Petitioner: Williard Vaughn.

Nature of Petitioner's Request: To amend regulations for residents in counseling to prohibit promoting or advertising their services independently to solicit business from the public.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition will be filed with the Registrar of Regulations and published on November 26, 2018, with comment requested until December 21, 2018. It will also be placed on the Virginia Regulatory Town Hall and available for comments to be posted electronically. At its first meeting following the close of comment, scheduled for February 9, 2019, the board will consider the request to amend regulations and all comment received in support or opposition. The petitioner will be informed of the board's response and any action it approves.

Public Comment Deadline: December 21, 2018.

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

VA.R. Doc. No. R19-16; Filed October 26, 2018, 1:54 p.m.

Agency Decision

Title of Regulation: **18VAC115-20. Regulations Governing the Practice of Professional Counseling.**

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

Name of Petitioner: Charles R. McAdams, III.

Nature of Petitioner's Request: To amend the requirements for licensure by endorsement to include the National Counselor Licensure for Endorsement Process (NCLEP) as a route for counselor licensure.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on November 2, 2018, the board discussed the request to amend the regulations and all comment received. The board voted to refer the issue of portability to the Regulatory Committee for further consideration and not to initiate rulemaking at this time. However, the board took an additional action to recognize the Certified Clinical Mental Health Counselor (CCMHC) credential from the National Board of Certified Counselors (NBCC) as acceptable in lieu of transcripts verifying education and documentation verifying supervised experience in applying for licensure by endorsement. The board has the authority in subsection B 3 of 18VAC115-20-45 to identify "any other board-recognized entity" and has acted on that authority to recognize the CCMHC from the NBCC.

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

VA.R. Doc. No. R19-05; Filed November 5, 2018, 5:11 p.m.

BOARD OF PSYCHOLOGY

Agency Decision

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology.**

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Name of Petitioner: Lee Cooper.

Nature of Petitioner's Request: Proposing that PCSAS be recognized as an additional accrediting body of doctoral programs in psychology in 18VAC125-20-54.

Agency Decision: Request denied.

Statement of Reason for Decision: The board considered the petition relating to acceptance of accreditation by the Psychological Clinical Science Accreditation System (PCSAS) for licensure in clinical psychology, as well as comment received from interested parties and additional information from the petitioner on PCSAS and from the Association of State and Provincial Psychology Boards (ASPPB). The board decided at its meeting on October 30, 2018, not to initiate rulemaking at this time. There will be further review and discussion in the context of proposed changes to the educational requirements for clinical psychologists as a part of the overall review of regulations. The board will continue to have discussion and gather information in the coming months.

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

VA.R. Doc. No. R18-35; Filed October 30, 2018, 1:06 p.m.

BOARD OF VETERINARY MEDICINE

Agency Decision

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.**

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

Name of Petitioner: Kelly Gotschalk, DVM.

Nature of Petitioner's Request: To amend 18VAC150-20-170 to allow practice management courses to be approved for continuing education credit.

Agency Decision: Request denied.

Statement of Reason for Decision: The petition and the comments on the petition were considered by the board at its meeting on November 6, 2018. Members of the board voted to deny the petition for a variety of reasons. First, the petitioner had requested that the board interpret its current regulations through a guidance document to allow hours of practice management to meet requirements for continuing education. Such an interpretation is beyond the scope of a guidance document, so the recognition of courses in practice management would necessitate an amendment to rule. Second, the board was concerned that hours of practice management would dilute the purpose of continuing education, which is to ensure that licensees remain minimally competent to practice veterinary medicine. While practice management (and related) courses may be extremely valuable in effectively operating a veterinary establishment and managing employees, they are not essential to the mission of the board to protect patient health and safety. The board considered the advisability of increasing the hourly requirement and then recognizing practice management for the number of additional hours, but that would increase the burden on all licensees.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. R18-36; Filed November 6, 2018, 1:16 p.m.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Proposed Regulation

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

Title of Regulation: **1VAC20-50. Candidate Qualification (amending 1VAC20-50-20).**

Statutory Authority: §§ 24.2-103 and 24.2-506 of the Code of Virginia.

Public Hearing Information:

December 18, 2018 - 11:30 a.m. - Virginia State Capitol Building, 1000 Bank Street, Senate Room 3, Richmond, VA 23219

Public Comment Deadline: December 17, 2018.

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

Summary:

The proposed amendments (i) make the candidate's petition invalid if the candidate's residence address provided on the petition does not match the candidate's voter registration record at the time of the petition's circulation and (ii) permit the petition or signature to be determined valid even if the signer fails to provide the year when signing the petition. The proposed amendments add to the circumstances in which an omission will be considered nonmaterial and will not render the petition or signature invalid. The general registrar must still be able to independently and reasonably verify the validity of the petition or signature.

1VAC20-50-20. Material omissions from candidate petitions and petition signature qualifications.

A. Pursuant to the requirements of §§ 24.2-506, 24.2-521, and 24.2-543 of the Code of Virginia, a petition or a petition signature should not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any petition containing such omissions shall be rendered invalid if:

1. The petition submitted is not the double-sided document, or a double-sided copy thereof, provided by the State Board of Elections;

2. The petition does not have the name, or some variation of the name, ~~and address~~ of the candidate on the front of the form;

3. The petition fails to identify the office sought on the front of the form;

4. The petition fails to identify the applicable election district in which the candidate is running for office;

5. The candidate's residence address provided on the petition does not match the candidate's voter registration record at the time of the petition's circulation;

6. The circulator has not signed the petition affidavit and provided his current address;

~~6.~~ 7. The circulator is a minor or a felon whose voting rights have not been restored;

~~7.~~ 8. The circulator has not signed the petition he circulated in the presence of a notary;

~~8.~~ 9. The circulator has not had a notary sign the affidavit for each petition submitted;

~~9.~~ 10. A person other than the circulator signed the petition affidavit;

~~10.~~ 11. The notary has not affixed a photographically reproducible seal;

~~11.~~ 12. The notary has not included his registration number and commission expiration date; or

~~12.~~ 13. Any combination of the scenarios of this subsection exists.

C. The following omissions related to individual petition signatures are always material and any petition signature containing such omission shall be rendered invalid if:

1. The signer is not qualified to cast a ballot for the office for which the petition was circulated;

2. The signer is also the circulator of the petition;

3. The signer provided an accompanying date that is subsequent to the date upon which the notary signed the petition;

4. The signer did not sign the petition; or

5. The signer provided an address that does not match the petition signer's address in the Virginia voter registration system, unless the signer provided an address that is within the same precinct where a voter is currently registered in the Virginia voter registration system, and the signer can be reasonably identified as the same registered voter.

D. The following omissions shall be treated as nonmaterial provided the general registrar can independently and reasonably verify the validity of the petition or signature:

1. An older version of the petition is used (provided that the information presented complies with current laws, regulations, and guidelines);

2. The "election information" including (i) county, city, or town in which the election will be held; (ii) election type; and (iii) date of election are omitted;

3. The name of the candidate and office sought are omitted from the back of the petition;

4. The circulator has not provided the last four digits of his social security number in the affidavit;

5. The signer omits his first name, provided he provides a combination of his first or middle initials or a middle name and last name and address that matches a qualified voter within the Virginia voter registration system;

6. The signer provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");

7. The signer prints his name on the "Print" line and prints his name on the "Sign" line; ~~or~~

8. The signer fails to provide the date but a period of time that qualifies can affirmatively be established with previous and subsequent dates provided by other signers upon the petition page; or

9. The signer fails to provide the year when signing the petition.

E. A signature upon a petition shall be included in the count toward meeting the petition signature requirements only if:

1. The petition signer is a qualified voter who is maintained on the Virginia voter registration system either (i) with active status or (ii) with inactive status and qualified to vote for the office for which the petition was circulated;

2. The signer provides his name; and

3. The signer provides an address that matches the petition signer's address in the Virginia voter registration system, or the signer provided an address that is within the same precinct where a voter is currently registered in the Virginia voter registration system, and the signer can be reasonably identified as the same registered voter.

VA.R. Doc. No. R19-5732; Filed October 25, 2018, 11:38 a.m.

OFFICE OF THE STATE INSPECTOR GENERAL

Proposed Regulation

Title of Regulation: **1VAC42-30. Fraud and Abuse Whistle Blower Reward Fund (adding 1VAC42-30-10 through 1VAC42-30-100).**

Statutory Authority: § 2.2-3014 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 25, 2019.

Agency Contact: Mark Courtney, Regulatory Coordinator, Office of the State Inspector General, 101 North 14th Street, 7th Floor, Richmond, VA 23219, telephone (804) 625-3255, FAX (804) 371-0165, or email mark.courtney@osig.virginia.gov.

Basis: Section 2.2-309 of the Code of Virginia outlines the powers and duties of the State Inspector General, and subsection E of § 2.2-3014 of the Code of Virginia requires the Office of the State Inspector General (OSIG) to promulgate regulations for the administration of the Fraud and Abuse Whistle Blower Reward Fund.

Purpose: The proposed regulations (i) provide direction to state agency employees and citizens for reporting instances of fraud or abuse within executive branch agencies; (ii) encourage state agency employees and citizens of the Commonwealth to report instances of fraud, abuse, or other wrongdoing committed within executive branch agencies and nonstate agencies or by independent contractors of state agencies; (iii) provide resources to pay monetary rewards to state agency employees and citizens who provide relevant information to the OSIG that results in recovery of funds on behalf of the Commonwealth; and (iv) provide statutory protection for state employees and citizens who report instances of abuse or wrongdoing from discrimination or retaliation by state agencies.

Substance: The proposed regulation defines the Fraud and Abuse Whistle Blower Reward Fund and its administration by the Office of the State Inspector General, including fund eligibility requirements, fund amount, fund distribution, process for leftover fund moneys at the end of the fiscal year, and the establishment of the fund on the books of the Comptroller, including:

Providing information on the Whistle Blower Protection Act and Whistle Blower Reward Fund; definitions for technical terms in regulations and how technical terms apply to Whistle

Blower Reward Fund; and guidelines for reporting instances of alleged fraud, waste, or other wrongdoing in state government executive branch agencies.

Explaining OSIG's role in administering the Whistle Blower Protection Act (WBPA) Program and the Whistle Blower Reward Fund and how OSIG will communicate information about and advertise the WBPA Program and the Whistle Blower Reward Fund.

Explaining the process OSIG staff follows when a whistle blower allegation under the WBPA Program is received and when investigating a whistle blower allegation.

Explaining the structure of the Whistle Blower Reward Fund and what happens to its moneys; how payments from the Whistle Blower Reward Fund are made to whistle blowers and defining those payments; what legal protections whistle blowers have as a result of the WBPA, including antiretaliation provisions; and the annual report OSIG must provide the General Assembly and the Governor concerning the WBPA Program and the Whistle Blower Reward Fund.

Issues: The advantages of the proposed regulation is that it will provide direction to all citizens of the Commonwealth of Virginia, including state employees, for reporting instances of fraud or abuse within executive branch agencies.

All moneys recovered by the State Inspector General as the result of whistle blower activity and alerts originating with OSIG shall be deposited in the fund (85% of all sums recovered shall be remitted to the institutions or governmental agencies on whose behalf the recovery was secured unless otherwise directed by a court of law). Interest earned on moneys in the fund shall remain in the fund and be credited to it. Any moneys remaining in the fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the fund.

Moneys in the fund shall be used solely to (i) provide monetary rewards to persons who have disclosed information of wrongdoing or abuse and the disclosure results in a recovery of at least $5,000 or (ii) support the administration of the fund, defray fund advertising costs, or subsidize the operation of the Fraud, Waste and Abuse Hotline.

There are no anticipated disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Virginia Code § 2.2-3014, the Office of the State Inspector General (OSIG) proposes to promulgate this regulation in order to set out administrative procedures and rules for the Fraud and Abuse Whistle Blower Reward Fund (Fund).

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

Estimated Economic Impact. The Fraud and Abuse Whistle Blower Protection Act (Act)[1] was enacted in 2009 in order to protect executive branch state employee whistle blowers from discrimination or retaliation by their employing agency, other state agencies, or independent contractors of state agencies. The Act also established the Fund in order to provide monetary rewards to whistle blowers who have disclosed information of wrongdoing or abuse described under the Act. Chapter 403 of the 2014 Acts of Assembly[2] expanded the protections of the Fraud and Abuse Whistle Blower Protection Act to all Virginia citizens, and made Virginian whistle blowers not employed by the Commonwealth eligible for an award from the Fund. Chapter 316 of the 2015 Acts of Assembly[3] added independent state agencies as agencies covered by the Act. Finally, Chapter 292 of the 2016 Acts of Assembly[4] made the Act applicable to local government and public school divisions as well.

The promulgation of this regulation is beneficial in that it makes procedures and requirements more transparent for potential whistle blowers and employers. The regulation does not introduce new costs. Thus, the proposed regulation will create a net benefit.

If the primary purpose of the Fund is to increase the likelihood that instances of fraud, abuse, or other wrongdoing is reported, then it may be advisable to eliminate the residency requirement. Individuals may be reluctant to report their superiors within an agency while working there but be more willing to report once they leave that job for one perhaps out of state. Additionally, employees of an out-of-state firm that has a contract with a Virginia agency could potentially be encouraged to report fraud if they were eligible for a reward. The 2014 legislation does limit fund awards to Commonwealth residents. Therefore, OSIG does not have discretion to change that in this regulation.

Businesses and Entities Affected. The proposed regulation potentially affects all executive branch and independent state agencies, local governments, public school divisions, and independent contractors of these entities.

Localities Particularly Affected. The proposed regulation does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed regulation is unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property. The proposed regulation is unlikely to significantly affect the use and value of private property.

Real Estate Development Costs. The proposed regulation is unlikely to affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed regulation is unlikely to significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed regulation does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed regulation does not adversely affect businesses.

Localities. The proposed regulation does not adversely affect localities.

Other Entities. The proposed regulation does not adversely affect other entities.

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[1]See http://lis.virginia.gov/cgi-bin/legp604.exe?091+ful+CHAP0340

[2]See http://leg1.state.va.us/cgi-bin/legp504.exe?141+ful+CHAP0403

[3]See http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0316

[4]See http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0292

Agency's Response to Economic Impact Analysis: The Office of the State Inspector General concurs with the economic impact analysis.

Summary:

The proposed regulation defines the Fraud and Abuse Whistle Blower Reward Fund and its administration by the Office of the State Inspector General, including (i) eligibility requirements, (ii) amount and distribution, (iii) process for leftover moneys at the end of the fiscal year, and (iv) the fund's establishment on the books of the Comptroller.

CHAPTER 30
FRAUD AND ABUSE WHISTLE BLOWER REWARD FUND

1VAC42-30-10. Definitions.

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

"Abuse" means an employer's or employee's conduct or omissions that result in substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state, or local government sources.

"Commonwealth" means the Commonwealth of Virginia.

"Disclosure" means a voluntary formal or informal communication or transmission of (i) any violation of any law, rule, or regulation; (ii) gross mismanagement; (iii) a gross waste of funds; (iv) an abuse of authority; or (v) a substantial and specific danger to public health or safety.

"Employee" means any individual who is employed on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of and whose compensation is payable no more often than biweekly in whole or in part by a Virginia governmental agency.

"Employer" means a person supervising one or more employees, including the employee filing a good faith report, a superior of that supervisor, or an agent of the governmental agency.

"Executive branch agency" or "agency" means any agency, institution, board, bureau, commission, council, public institution of higher education, or instrumentality of state government in the executive department listed in the appropriation act.

"Fraud" means the intentional deception perpetrated by an individual or an organization, either internal or external to state government, that could result in a tangible or intangible benefit to themselves, others, or the Commonwealth, including local government, or could cause detriment to others or the Commonwealth. Fraud includes a false representation of the facts, whether by words or by conduct. Fraud also includes false or misleading statements, the concealment of essential information, or information or actions that deceive or are intended to deceive.

"Fraud and Abuse Whistle Blower Protection Act Program" or "WBPA Program" means the policy of the Commonwealth that Commonwealth citizens and employees of state government are freely able to report instances of wrongdoing or abuse committed by their employing agency, other state agencies, or independent contractors of state agencies.

"Fraud and Abuse Whistle Blower Reward Fund" or "fund" means the fund used solely to provide monetary rewards to Commonwealth citizens who have disclosed information of wrongdoing or abuse under the WBPA Program that results in a recovery of at least $5,000.

"Good faith report" means a reported incident of possible wrongdoing or abuse made without malice, for which the person reporting has reasonable cause to believe wrongdoing or abuse occurred.

"Governmental agency" means (i) any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act and any independent agency; (ii) any county, city, town, or local or regional governmental

authority; and (iii) any local school division as defined in § 22.1-280.2:2 of the Code of Virginia.

"Hotline coordinator" means a qualified employee, designated by a governmental agency director or chief administrator, responsible for conducting State Fraud, Waste and Abuse Hotline investigations referred to the agency by OSIG.

"Internal audit director" means a director of a governmental agency internal audit program.

"Misconduct" means conduct or behavior by an employee that is inconsistent with state, local, or agency standards for which specific corrective or disciplinary action is warranted.

"Nonstate agency" means any public or private foundation, authority, institute, museum, corporation, or similar organization that is (i) not a unit of state government or a political subdivision of the Commonwealth as established by general law or special act and (ii) wholly or principally supported by state funds. "Nonstate agency" shall not include any such entity that receives state funds (a) as a subgrantee of a state agency; (b) through a state grant-in-aid program authorized by law; (c) as a result of an award of a competitive grant or a public contract for the procurement of goods, services, or construction; or (d) pursuant to a lease of real property as described in subdivision 5 of § 2.2-1149 of the Code of Virginia.

"Office of the State Inspector General" or "OSIG" means the governmental agency that conducts independent investigations, performance audits, and other services designed to provide objective and useful information to the Commonwealth and those charged with its governance and promotes efficiency and effectiveness in state government executive branch agencies in accordance with Article 1 (§ 2.2-307 et seq.) of Chapter 13.2 of the Code of Virginia.

"Public body" means any legislative body; any authority, board, bureau, commission, district, agency, or political subdivision of the Commonwealth, including counties, cities, towns, city councils, boards of supervisors, school boards, planning commissions, and boards of visitors of institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds. "Public body" includes any committee, subcommittee, or other entity however designated of the public body or formed to advise the public body, including those with private sector or citizen members and corporations organized by the Virginia Retirement System. For the purposes of this chapter, the term "public body" does not include the courts of the Commonwealth.

"Reward" means a monetary benefit payable from the fund by OSIG to an eligible whistle blower.

"Screening process" means OSIG's internal review to ensure reports of information or disclosures of wrongdoing fall within the authority of the WBPA Program.

"State Fraud, Waste and Abuse Hotline" or "hotline" means the program (i) that provides Commonwealth citizens with a confidential and anonymous method to report suspected occurrences of fraud, waste, and abuse in state agencies and institutions and (ii) that provides the Commonwealth a way to investigate such occurrences to determine their validity and make appropriate recommendations to address deficiencies.

"Whistle blower" means a Commonwealth employee or citizen who witnesses or has evidence of wrongdoing or abuse and who makes a good faith, open, and public report of the wrongdoing or abuse to one of the employee's superiors, an agent of the employer, or an appropriate authority.

"Wrongdoing" means a violation, which is not of a merely technical or minimal nature, of a federal or state law or regulation or a formally adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or an employee. "Wrongdoing" includes (i) any violation of any law, rule, or regulation; (ii) gross mismanagement; (iii) a gross waste of funds; (iv) an abuse of authority; or (v) a substantial and specific danger to public health or safety.

1VAC42-30-20. Office of the State Inspector General responsibilities.

A. OSIG is responsible for administering the WBPA Program and fund and the following tasks:

1. Notifying annually Commonwealth employees, citizens, and governmental bodies, including state agencies, of the WBPA Program and fund regulations and procedures for submitting information regarding wrongdoing or abuse.

2. Protecting the identity of Commonwealth employees and citizens who make allegations of wrongdoing or abuse through the WBPA Program. OSIG will keep this information confidential to the extent allowed by law.

3. Conducting appropriate investigations and preparing official reports.

4. Receiving and evaluating fund claims.

5. Ensuring payment of approved fund moneys to whistle blowers.

6. Submitting an annual report on WBPA Program activities to the Governor and General Assembly.

7. Notifying individuals making allegations of the possible incentives as a result of moneys recovered and available through the fund.

B. OSIG is responsible for assigning, coordinating, and investigating alleged wrongdoing or abuse reported to OSIG under the WBPA Program. OSIG may work with executive

branch agency internal audit directors, executive branch agency hotline coordinators, or representatives of public bodies when performing WBPA Program investigations.

1VAC42-30-30. Fraud and Abuse Whistle Blower Protection Act Program and Reward Fund notification.

A. Annually, the State Inspector General will communicate with all state agency heads. The communication will:

1. Publicize the WBPA Program and fund.

2. Explain the protections afforded to individuals who report instances of wrongdoing or abuse committed within executive branch agencies and nonstate agencies.

3. Notify state agency heads of relevant statutory amendments or program changes.

4. Contain the requirements for reporting allegations to OSIG and the incentives under the WBPA Program.

5. Clarify pertinent differences between the WBPA Program and the hotline regarding the rules governing anonymity and confidentiality.

6. Provide available materials to assist agency heads in promoting the WBPA Program and fund, as well as available training for Commonwealth employees regarding the WBPA Program and fund.

B. Annually, OSIG will publicize the WBPA Program and fund on the OSIG website and to Commonwealth citizens through the distribution of a news release to Virginia media, as well as to state employees through an electronic communication in partnership with the Department of Human Resource Management. The communication will:

1. Contain the requirements for reporting allegations to OSIG and the incentives under the WBPA Program.

2. Clarify pertinent differences between the WBPA Program and the hotline regarding the rules governing anonymity and confidentiality.

1VAC42-30-40. Reporting alleged fraud, abuse, or wrongdoing.

A. A Commonwealth employee or citizen with an allegation of wrongdoing or abuse under the WBPA Program may contact OSIG by phone, email, online complaint form, United States Postal Service, or FAX.

B. OSIG staff is available to advise citizens on what to report that meets the definition of wrongdoing or abuse.

C. If an investigation results in recoverable funds, and the whistle blower seeks to file a fund claim under the WBPA Program, the whistle blower will be required to provide his name and lawful residence.

While not anonymous, OSIG will keep this information confidential to the extent allowed by law.

1VAC42-30-50. Office of the State Inspector General receipt of an allegation.

A. Allegations of wrongdoing or abuse received by OSIG undergo the hotline screening process.

B. Allegations submitted by an individual who is not a Commonwealth employee or citizen will be referred to the appropriate governmental agency or organization.

C. If the agency or organization reported is not an executive branch or independent state agency or entity or a local governmental agency or entity or school division, the information will be forwarded to that entity where possible for informational purposes only.

1VAC42-30-60. Allegation investigative process.

A. OSIG will prepare a detailed written summary that describes the allegation of wrongdoing or abuse submitted through the WBPA Program.

B. The hotline manager or designee will create a confidential tracking number for each case and assign it for formal investigation.

C. OSIG will monitor the progress of each investigation and provide the State Inspector General with regular status updates of the assignment.

D. Upon completion of an investigation, the investigator will prepare and submit a case report for management review and approval. When appropriate, recommendations for corrective action to address procedural deficiencies disclosed during the investigation will be included in the case report.

E. Formal case reports will describe all financial recovery realized on behalf of the Commonwealth as a result of the information received from the whistle blower and the subsequent investigation.

F. Case reports will be forwarded to the State Inspector General for review. Upon authorization by the State Inspector General, the investigator will prepare an executive summary that recaps the findings of the investigation, the recommendations, the recovery of funds, and the status of applicable fund claims. Upon signature approval of the State Inspector General, the executive summary will be forwarded to the subject state executive branch agency head, respective secretariat, and the Chief of Staff of the Governor.

1VAC42-30-70. Nonreverting fund.

A. OSIG will coordinate with the State Comptroller to establish a special nonreverting fund.

B. The fund will be established on the books of the State Comptroller and administered by the State Inspector General.

C. All moneys recovered by an OSIG investigation as a result of whistle blower activity shall be deposited in the fund.

D. Except for the moneys described in subsection F of this section, moneys remaining in the fund at the end of each fiscal year, including interest, shall not revert to the general fund, but shall remain in the fund.

E. Moneys in the fund shall solely be used to:

1. Provide monetary rewards to Commonwealth employees and citizens who have disclosed information of wrongdoing or abuse under the WBPA Program (§ 2.2-3009 et seq. of the Code of Virginia), and the disclosure resulted in a recovery of at least $5,000.

2. Support the administration of the fund, defray fund advertising costs, or subsidize the operation of the hotline.

F. Per the State Inspector General's authorization by the end of each calendar quarter, 85% of all sums recovered by an OSIG investigation will be remitted to the institutions or agencies concerned, unless otherwise directed by a court of law.

1VAC42-30-80. Fund payments to whistle blowers.

A. Within 10 working days, excluding state holidays and weekends, of the closing of a WBPA Program investigation that verifies a final recovery and deposit in the fund of $5,000 or more, the State Inspector General will review and certify the fund claim. Within five working days after the State Inspector General's verification, the whistle blower will be notified of the award amount he is eligible to receive. Upon approval of the fund claim, the State Inspector General will submit a written request to the State Comptroller to make a reward payment from the fund to the whistle blower.

B. The State Treasurer will make reward payments from the fund based on a warrant issued by the State Comptroller and a written request signed by the State Inspector General.

C. Award amounts.

1. The amount of the fund reward shall be up to 10% of the actual sums recovered by the Commonwealth as a result of the disclosure of the wrongdoing or abuse.

2. OSIG will consider many factors in determining the amount of an award based on the unique facts and circumstances of each case. OSIG may increase the award percentage up to the maximum allowed based on the following factors: (i) the significance of the information provided to OSIG to the success of any proceeding brought against wrongdoers; (ii) the extent of the assistance provided to OSIG in its investigation and any resulting findings; (iii) OSIG's law-enforcement interest in deterring violations of the applicable laws by making awards to whistle blowers who provide information that leads to the successful enforcement of these laws; and (iv) whether and the extent to which the whistle blower participated in his agency's internal compliance systems, such as, for example, reporting the possible violations through internal whistle blower, legal, or compliance procedures, before or at the same time the possible violations were reported to OSIG.

3. OSIG may reduce the amount of an award based on the following: (i) if the whistle blower was a participant in or culpable for the violations reported; (ii) if the whistle blower unreasonably delayed reporting the violations to OSIG; and (iii) if the whistle blower interfered with his agency's internal compliance and reporting systems, such as, for example, making false statements to the compliance department that hindered its efforts to investigate possible wrongdoing or abuse.

4. The amount of the reward will not exceed the balance of the fund, regardless of the sums recovered.

5. In the event that multiple whistle blowers have simultaneously reported the same fund-eligible occurrence of wrongdoing or abuse, the fund moneys may be split up to 10% among the whistle blowers at the State Inspector General's discretion. The State Inspector General's decision regarding the allocation of fund moneys is final and binding upon all parties and cannot be appealed.

6. The request for payment will include the name and address of the whistle blower and the payment amount. OSIG will provide documentation supporting the amount of the payment to the State Comptroller.

7. Once approved, the State Comptroller shall forward the request to Finance and Administration of the Department of Accounts (DOA) with a request that Finance and Administration process the payment to the whistle blower.

8. DOA will ensure the amount of the fund reward is properly included in the whistle blower's federal and state tax records (i.e., W-2 for employees; 1099 for Commonwealth citizens).

9. OSIG will confirm that DOA processes the fund request and that the reward payment is made to the whistle blower for the amount approved by the State Inspector General.

D. Five percent of all sums recovered on behalf of the Commonwealth will be retained in the fund to support the administration of the fund, defray advertising costs, and subsidize the operation of the hotline. Expenditures for administrative costs for management of the fund will be approved by the State Inspector General.

1VAC42-30-90. Whistle blower protections.

A. Employee protections.

1. No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle blower, whether acting individually or under the direction of another individual.

2. No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle blower who is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry.

3. Nothing in this chapter shall prohibit an employer from disciplining or discharging a whistle blower for misconduct or violation of criminal law.

4. If an employee has, in good faith, exhausted existing internal procedures for reporting and seeking recovery of falsely claimed sums through official channels, and if the Commonwealth failed to act on the information provided in a reasonable period of time, no court shall have jurisdiction over an action brought under § 8.01-216.5 of the Code of Virginia based on information discovered by a present or former employee of the Commonwealth during the course of his employment.

5. Any whistle blower covered by the state grievance procedure may initiate a grievance alleging retaliation for reporting wrongdoing or abuse through the WBPA Program and may request relief throughout that procedure.

B. Commonwealth citizen protections.

1. No governmental agency may threaten or otherwise discriminate or retaliate against a citizen whistle blower because the whistle blower is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry.

2. Except for the provisions of § 2.2-3011 E of the Code of Virginia, the WBPA Program does not limit the remedies provided by the Virginia Fraud Against Taxpayers Act (§ 8.01-216.1 et seq. of the Code of Virginia).

C. Protection against discrimination and retaliation - good faith required.

1. To be protected by the provisions of this chapter, an employee or Commonwealth citizen who discloses information about suspected wrongdoing or abuse shall do so in good faith and upon a reasonable belief information provided is accurate.

2. Reckless disclosures or disclosures the employee or citizen knows or should have known were false, confidential by law, or malicious are not deemed good faith reports and are not protected.

1VAC42-30-100. Whistle Blower Protection Act Program and Reward Fund annual report.

A. OSIG shall submit an annual report to the Governor and the General Assembly of Virginia summarizing the activities of the fund.

B. OSIG will provide a copy of the WBPA Program annual report to the Chief of Staff to the Governor, the Secretary of Finance, and the State Comptroller.

VA.R. Doc. No. R16-4186; Filed November 6, 2018, 1:11 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-40, 4VAC20-720-70, 4VAC20-720-80).**

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

Effective Dates: November 12, 2018, through December 11, 2018.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Preamble:

The amendments (i) adjust the open dates of Rappahannock River Rotation Area 3 to close harvest by patent tong on November 11, 2018, and open harvest by hand scrape from November 12, 2018, through January 10, 2019; and (ii) lower the limit in the patent tong areas to eight bushels per licensed harvester per day and 16 bushels per vessel per day.

4VAC20-720-40. Open oyster harvest season and areas.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. It shall be unlawful to harvest clean cull oysters from the public oyster grounds and unassigned grounds except during the lawful seasons and from the lawful areas as described in ~~the following subdivisions of~~ this subsection.

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2018, through April 30, 2019.

2. Milford Haven: December 1, 2018, through February 28, 2019.

3. Rappahannock River Area 9: November 1, 2018, through December 31, 2018.

4. Little Wicomico River: October 1, 2018, through December 31, 2018.

5. Coan River Area: October 1, 2018, through December 31, 2018.

6. Yeocomico River Area: October 1, 2018, through December 31, 2018.

7. Nomini Creek Area: October 1, 2018, through December 31, 2018.

8. Mobjack Bay Area: February 1, 2019, through February 28, 2019.

9. Rappahannock River Rotation Area 3: November 1, 2018, through November ~~30~~ 11, 2018 (patent tong only), and ~~January 1, 2019, through February 28~~ November 12, 2018, through January 10, 2019 (hand scrape only).

10. Rappahannock River Rotation Area 5: October 1, 2018, through November 30, 2018.

11. Great Wicomico River Rotation Area 2: December 1, 2018, through December 31, 2018, and February 1, 2019, through February 28, 2019.

12. Upper Chesapeake Bay - Blackberry Hangs Area: December 1, 2018, through December 31, 2018, and February 1, 2019, through February 28, 2019.

13. James River Hand Scrape Areas 1 and 3: November 1, 2018, through January 31, 2019.

14. James River Hand Scrape Area 2: October 1, 2018, through December 31, 2018.

15. Pocomoke Sound Rotation Area 2: December 1, 2018, through January 31, 2019.

16. Tangier Sound Rotation Area 2: December 1, 2018, through February 28, 2019.

17. Pocomoke Sound Area: November 1, 2018, through November 30, 2018.

18. Rappahannock River Area 8: October 1, 2018, through October 31, 2018 (patent tong only), and December 1, 2018, through December 31, 2018 (hand scrape only).

19. Deep Rock Area: December 1, 2018, through February 28, 2019.

20. Seaside of the Eastern Shore (for clean cull oysters only): November 1, 2018, through March 31, 2019.

C. It shall be unlawful to harvest seed oysters from the public oyster grounds or unassigned grounds, except during the lawful seasons. The harvest of seed oysters from the lawful areas is described in ~~the following subdivisions of~~ this subsection.

1. James River Seed Area: October 1, 2018, through May 31, 2019.

2. Deep Water Shoal State Replenishment Seed Area: October 1, 2018, through May 31, 2019.

4VAC20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, the Rappahannock River Area 9, Milford Haven, Little Wicomico River, Coan River Area, Nomini Creek Area and Yeocomico River Area, except by hand 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 by any gear from the seaside of the Eastern Shore except by hand or hand tong. It shall be unlawful to harvest oysters that are not submerged at mean low water by any gear other than by hand.

C. It shall be unlawful to harvest oysters in the following areas by any gear except by hand scrape: Rappahannock River Rotation Area 3, from ~~January 1~~ November 12, 2018, through ~~February 28~~ January 10, 2019; Rappahannock River Area 5, from October 1, 2018, through November 30, 2018; James River Hand Scrape Areas 1 and 3, from November 1, 2018, through January 31, 2019; James River Hand Scrape Area 2, from October 1, 2018, through December 31, 2018; Upper Chesapeake Bay - Blackberry Hangs Area, from December 1, 2018, through December 31, 2018, and February 1, 2019, through February 28, 2019; Mobjack Bay Area, from February 1, 2019, through February 28, 2019; Pocomoke Sound Area, from November 1, 2018, through November 30, 2018; and Great Wicomico River Areas, from December 1, 2018, through December 31, 2018 and February 1, 2019, through February 28, 2019.

D. It shall be unlawful to harvest oysters from the following areas by any gear except an oyster patent tong: Rappahannock River Rotation Area 3, from November 1, 2018, through November ~~30~~ 11, 2018, and Rappahannock River Rotation Area 8, from October 1, 2018, through October 31, 2018.

E. It shall be unlawful for any person to have more than one hand scrape on board his vessel while he 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 his vessel while he is harvesting or attempting to harvest oysters from public grounds by hand scrape.

F. It shall be unlawful to harvest oysters from the Pocomoke and Tangier Sounds Rotation Area 2, except by an oyster dredge.

G. It shall be unlawful to harvest oysters from the Deep Rock Area, except by an oyster patent tong.

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

A. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a

valid gear license required for any harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid hand scrape or dredge license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of 16 bushels clean cull oysters harvested from the areas described in 4VAC20-720-40 B 8 through 18 when the vessel is using the hand scrape or oyster dredge.

B. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required for any harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid hand or hand tong license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of 12 bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit for clean cull oysters harvested from the areas described in 4VAC20-720-40 B 2 through 7 and 20, whereby that vessel limit shall equal the number of registered commercial fisherman licensees on board the vessel who hold a valid gear license and have paid the oyster resource user fee multiplied by 12.

C. It shall be unlawful for any vessel to exceed a daily vessel limit for clean cull oysters harvested from the areas described in 4VAC20-720-40 B 1, whereby that vessel limit shall equal the number of registered commercial fisherman licensees on board the vessel who hold a valid gear license and who have paid the oyster resource user fee multiplied by 12. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and hold a valid gear license required for any harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses the valid licenses and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of 12 bushels per day.

D. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required for any harvest area as described in 4VAC20-720-75 and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid patent tong license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of ~~10~~ eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of ~~20~~ 16 bushels of clean cull oysters harvested from the areas described in 4VAC20-720-40 B when the vessel is using patent tongs.

E. In the Pocomoke and Tangier Sounds Rotation Area 2, no blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

VA.R. Doc. No. R19-5738; Filed November 1, 2018, 12:48 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF CORRECTIONS

Fast-Track Regulation

Title of Regulation: **6VAC15-40. Minimum Standards for Jails and Lockups (amending 6VAC15-40-770).**

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-131 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 26, 2018.

Effective Date: January 10, 2019.

Agency Contact: Emmanuel Fontenot, Compliance and Accreditation Manager, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-7923, or email emmanuel.fontenot@vadoc.virginia.gov.

Basis: Sections 53.1-5 and 53.1-68 of the Code of Virginia mandate that the Board of Corrections prescribe regulations to govern the administration and operation of local correctional facilities.

Purpose: The current regulation requires that feminine hygiene items (as defined by facility policy) be provided upon reasonable request to each female inmate assigned to the general population. The proposed change to this regulation will mandate that feminine hygiene items be provided at no charge to female inmates. The purpose of this revision to the regulation is to provide for the public health and welfare of female inmates incarcerated in local and regional jails by providing them tampons and sanitary napkins at no cost to the inmate.

Rationale for Using Fast-Track Rulemaking Process: The amendments are minor, noncontroversial changes to current regulatory requirements mandated by Chapter 815 of the 2018 Acts of Assembly.

Substance: This revision clearly mandates that jails and lockups provide feminine hygiene products to female inmates at no charge.

Issues: The primary advantage of this revision is that it ensures that feminine hygiene items are provided to all female inmates regardless of their financial situation at no cost to the inmate and with minimum financial impact to jails and

lockups as this is the current general practice. There is no known disadvantage to the public, individual private citizens, or businesses and no significant disadvantage to the Commonwealth as most local and regional jails are already providing feminine hygiene products.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 815 of the 2018 Acts of Assembly, the Board of Corrections (Board) proposes to specify in regulation that jails and lockups must provide feminine hygiene products to female inmates without charge.

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

Estimated Economic Impact. Chapter 815 of the 2018 Acts of Assembly states that "The State Board of Corrections shall adopt and implement a standard to ensure the provision of feminine hygiene products to female inmates without charge." The Board proposes to specify in this regulation that "Feminine hygiene items (as defined by facility policy) shall be provided upon reasonable request to each female inmate without charge." Since this requirement is already part of the Code of Virginia, adding it to the regulation would have no impact beyond improving clarity for readers of the regulation.

Businesses and Entities Affected. The proposed amendment affects jails and lockups in the Commonwealth.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment does not affect employment.

Effects on the Use and Value of Private Property. The proposed amendment does not affect the use and value of private property.

Real Estate Development Costs. The proposed amendment does not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendment does not affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

Other Entities. The proposed amendment does not adversely affect other entities.

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

Summary:

Pursuant to Chapter 815 of the the 2018 Acts of Assembly, the amendment requires that a facility provide feminine hygiene items without charge to each female inmate.

6VAC15-40-770. Provision of hygiene items.

The facility shall provide soap, a toothbrush, and toothpaste or toothpowder to each inmate upon admission to the general population. Feminine hygiene items ~~(as defined by facility policy)~~, including sanitary napkins and tampons, shall be provided upon ~~reasonable~~ request to each female inmate ~~assigned to the general population~~ without charge. Notwithstanding security considerations, shaving equipment, including a mirror, and haircuts shall be made available, and the hygiene needs of all inmates shall be met.

VA.R. Doc. No. R19-5570; Filed October 29, 2018, 2:08 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Fast-Track Regulation

Title of Regulation: **9VAC20-11. Public Participation Guidelines (amending 9VAC20-11-50).**

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 26, 2018.

Effective Date: January 10, 2019.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Basis: Section 2.2-4007.02 of the Administrative Process Act requires agencies to develop and adopt public participation guidelines to solicit input from interested parties during the

development of regulations. The Virginia Waste Management Board previously adopted regulations concerning public participation guidelines during the regulatory development process.

Purpose: State law requires the Virginia Waste Management Board to adopt public participation guidelines to solicit input during the development of regulations. Chapter 795 of the 2012 Acts of Assembly revised § 2.2-4007.02 B of the Code of Virginia to allow interested parties the right to be accompanied by or represented by counsel during the formulation of a regulation. Participation by the public in the regulatory process is essential to assist the board in the promulgation of regulations that will protect the public health and safety.

Rationale for Using Fast-Track Rulemaking Process: The amendments are expected to be noncontroversial and appropriate for using the fast-track rulemaking process. The amendments make the regulations consistent with the Code of Virginia and the model public participation guidelines developed by the Department of Planning and Budget.

Substance: The Code of Virginia allows interested parties the right to be accompanied by or represented by counsel during the formulation of a regulation. This language has been added to the regulation.

Issues: This regulatory change will benefit the public and the agency. The regulatory change amends the regulation to be consistent with the Code of Virginia. The regulatory change does not place any additional requirements on the public or the agency; therefore, there are no disadvantages to the public or the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 795 of the 2012 Acts of Assembly,[1] the Virginia Waste Management Board (Board) proposes to specify in this regulation that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative when submitting data, views, and arguments, either orally or in writing, to the agency.

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

Estimated Economic Impact. The current Public Participation Guidelines state that: "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." The Board proposes to append "and (ii) be accompanied by and represented by counsel or other representative."

Chapter 795 of the 2012 Acts of Assembly added to the Code of Virginia § 2.2-4007.02. "Public participation guidelines" that interested persons also be afforded an opportunity to be accompanied by and represented by counsel or other representative. Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the Board's proposal to add this language to the regulation will not change the law in effect, but will be beneficial in that it will inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

Businesses and Entities Affected. The proposed amendment potentially affects all individuals who comment on pending regulatory changes.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment does not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendment does not affect the use and value of private property.

Real Estate Development Costs. The proposed amendment does not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendment does not affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

Other Entities. The proposed amendment does not adversely affect other entities.

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[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

Pursuant to § 2.2-4007.02 of the Code of Virginia, the amendment provides that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.

Part III
Public Participation Procedures

9VAC20-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. 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 reproposed 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.

VA.R. Doc. No. R19-5106; Filed November 2, 2018, 12:50 p.m.

Fast-Track Regulation

Title of Regulation: **9VAC20-200. Mercury Switch Regulations (repealing 9VAC20-200-10 through 9VAC20-200-70).**

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 26, 2018.

Effective Date: January 10, 2019.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, TTY (804) 698-4021, or email melissa.porterfield@deq.virginia.gov.

Basis: Section 10.1-1402 of the Code of Virginia, the statutory authority that allowed the Virginia Waste Management Board to adopt this regulation, has expired, and this regulation is being repealed.

Purpose: The statutory authority that allowed the board to adopt this regulation has expired, and this regulation is being repealed. Since the statutory authority for the regulation expired in 2015, the requirements in the regulation are no longer applicable. Repealing the regulation is essential to protect the welfare of citizens because it will ensure there is no confusion between the statute and the regulations as to what rules are in effect.

Rationale for Using Fast Track Rulemaking Process: This regulatory action is expected to be noncontroversial. The statutory authority that allowed the board to adopt this regulation has expired, and this regulation is being repealed.

Substance: The regulation is being repealed.

Issues: The statutory authority that allowed the board to adopt this regulation has expired, and this regulation is being repealed. Repealing this regulation will benefit both the public and the department since this action removes regulatory requirements that are no longer applicable. There are no disadvantages to the public of the department.

Collectively, automobile manufacturers have implemented a voluntary national automotive mercury switch removal

program managed by End of Life Vehicle Solutions. End of Life Vehicle Solutions collects, transports, retorts, recycles, or disposes of elemental mercury from automotive switches. This national initiative will continue to facilitate the removal of mercury from vehicles prior to vehicles being recycled, and repeal of this regulation will not impact Virginia vehicle recyclers participating in this national program.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (Board) proposes to repeal the Mercury Switch Regulations.

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

Estimated Economic Impact. The Mercury Switch Regulations were adopted in response to Chapters 16 and 163 of the 2006 Acts of Assembly. The purpose of the regulation was to reduce the quantity of mercury released into the environment by establishing standards and procedures for the removal of mercury switches from end-of-life vehicles demolished in the Commonwealth. The provisions of Chapters 16 and 163 of the 2006 Acts of Assembly were to expire on July 1, 2012. Chapter 793 of the 2011 Acts of Assembly extended the provisions of these Chapters to July 1, 2015. The provisions of these Acts of Assembly have expired and § 10.1-1402 of the Code of Virginia no longer authorizes the Waste Management Board to "adopt regulations concerning the criteria and standards for removal of mercury switches by vehicle demolishers." Consequently, the Board proposes to repeal this regulation.

Since the statutory authority for the regulation expired in 2015, the requirements in the regulation are no longer applicable. Repealing the regulation will create a moderate benefit in that the possibility that members of the public will mistakenly believe that the rules in the regulation are currently in effect will be eliminated.

Businesses and Entities Affected. The proposed repeal of this obsolete regulation will only affect members of the public who may have been misled into believing that the rules of the regulation currently apply.

Localities Particularly Affected. The proposed repeal of the regulation does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed repeal of the regulation does not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of the regulation does not affect the use and value of private property.

Real Estate Development Costs. The proposed repeal of the regulation does not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed repeal of the regulation does not significantly affect small business.

Alternative Method that Minimizes Adverse Impact. The proposed repeal of the regulation does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed repeal of the regulation does not adversely affect businesses.

Localities. The proposed repeal of the regulation does not adversely affect localities.

Other Entities. The proposed repeal of the regulation does not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

This action repeals the Mercury Switch Regulations because the provisions of § 10.1-1402 of the Code of Virginia authorizing the Virginia Waste Management Board to adopt regulations concerning the criteria and standards for removal of mercury switches by vehicle demolishers have expired.

VA.R. Doc. No. R19-4635; Filed November 2, 2018, 12:58 p.m.

STATE WATER CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-185).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1251 et seq.); 40 CFR Part 131.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 26, 2018.

Effective Date: January 10, 2019.

Agency Contact: Tish Robertson, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4309, FAX (804) 698-4116, or email tish.robertson@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia mandates and authorizes the State Water Control Board to establish water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law and to modify, amend, or cancel any such standards or policies established. Section 303(c) of the federal Clean Water Act mandates the State Water Control Board to review and, as appropriate, modify and adopt water quality standards. The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum requirements for water quality standards. The minimum requirements are use designations, water quality criteria to protect the designated uses, and an antidegradation policy. These are all mandates for water quality standards.

The Environmental Protection Agency (EPA) Water Quality Standards regulation (40 CFR 131. 11) is the regulatory basis for the EPA requiring the states to establish water quality criteria to protect designated uses, and the criteria are used to assess whether or not a waterbody is meeting those uses.

Purpose: The department has concluded that the proposed amendments to the regulation are essential to protecting the health, safety, and welfare of the citizens of the Commonwealth by protecting the water quality and living resources of the Chesapeake Bay and its tidal rivers. EPA has continued to refine the assessment procedures as scientific research and management applications reveal new insights and knowledge about the Chesapeake Bay. The EPA's procedure documents being incorporated into Virginia's regulation by this action replace or otherwise supersede similar criteria assessment procedures published in earlier documents, but not all of them. Therefore, it is necessary for the Virginia water quality standards to refer to each of the addenda published by EPA.

Rationale for Using Fast-Track Rulemaking Process: The proposed amendment to 9VAC25-260-185 B references assessment protocol documents published by EPA. These protocols have been developed by EPA through a collaborative process within the Chesapeake Bay Program. There have been several other similar technical addenda incorporated into Virginia's Water Quality Standards Regulation using the fast-track rulemaking procedure without opposition due to their noncontroversial nature since the Chesapeake Bay water quality criteria were originally adopted by the State Water Control Board in 2005.

Substance: The proposed substantive amendment to 9VAC25-260-185 B of the Water Quality Standards is a reference to the November 2017 Chesapeake Bay Criteria Assessment Protocols Addendum. These recently published protocols direct how Chesapeake Bay dissolved oxygen criteria should be assessed. Therefore, it is necessary for the Virginia Water Quality Standards to refer to this document.

Issues: There are no primary advantages or disadvantages to the public. The primary advantage to the agency and the Commonwealth is having improved methods for assessing attainment of designated uses in the Chesapeake Bay. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of this amendment.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to incorporate by reference the most recent U.S. Environmental Protection Agency (EPA) assessment methodology for the Chesapeake Bay nutrient criteria.[1]

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

Estimated Economic Impact. This regulation incorporates by reference the procedures to be followed when assessing the nutrient criteria in the Chesapeake Bay. These assessment procedures are frequently refined by the EPA as scientific research and management applications reveal new insights and knowledge about the Chesapeake Bay. According to the Department of Environmental Quality, there is no substantive difference between what is currently followed in practice and what is being prescribed in the updated procedures document proposed for incorporation by reference. However, the updated document contains procedures for assessment of short-duration dissolved oxygen criteria, which did not exist before. Currently, due to lack of resources, there is nothing being done in Virginia to assess the short-duration dissolved oxygen criteria. Therefore, the incorporation of the new assessment procedures would not have any immediate impact but would be beneficial when and if Virginia moves forward to assess short-duration dissolved oxygen criteria.

Businesses and Entities Affected. Currently, there are 139 point sources this regulation applies to. All but three are water treatment plants.

Localities Particularly Affected. The proposed amendment does not affect any particular locality more than others.

Projected Impact on Employment. The proposed amendment does not have any effect on employment.

Effects on the Use and Value of Private Property. The proposed amendment does not have any effect on the use and value of private property.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendment applies to only three small businesses, but no effect on them is expected.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not have adverse effects on small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not have adverse impacts on businesses.

Localities. The proposed amendment will not adversely affect localities.

Other Entities. The proposed amendment will not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendment incorporates by reference the Chesapeake Bay Criteria Assessment Protocols Addendum published in November 2017 by the U.S. Environmental Protection Agency on behalf of the Chesapeake Bay Program partnership.

[1]See Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries - 2017 Technical Addendum, EPA 903-R-17-002, CB/TRS 320-17, November 2017, U.S. EPA Region III Chesapeake Bay Office. Accessed online at www.chesapeakebay.net/documents/2017_Nov_ChesBayWQ_Criteria_Addendum_Final.pdf on May 17, 2018.

9VAC25-260-185. Criteria to protect designated uses from the impacts of nutrients and suspended sediment in the Chesapeake Bay and its tidal tributaries.

A. Dissolved oxygen. The dissolved oxygen criteria in the ~~below~~ following table apply to all Chesapeake Bay waters according to their specified designated use and supersede the dissolved oxygen criteria in 9VAC25-260-50.

Designated Use	Criteria Concentration/Duration	Temporal Application
Migratory fish spawning and nursery	7-day mean ≥ 6 mg/l (tidal habitats with 0-0.5 ppt salinity)	February 1 - May 31
	Instantaneous minimum ≥ 5 mg/l	
Open water[1]	30-day mean ≥ 5.5 mg/l (tidal habitats with 0-0.5 ppt salinity)	year-round[2]
	30-day mean ≥ 5 mg/l (tidal habitats with > 0.5 ppt salinity)	
	7-day mean ≥ 4 mg/l	
	Instantaneous minimum ≥ 3.2 mg/l at temperatures < 29°C	
	Instantaneous minimum ≥ 4.3 mg/l at temperatures ≥ 29°C	
Deep water	30-day mean ≥ 3 mg/l	June 1 - September 30
	1-day mean ≥ 2.3 mg/l	
	Instantaneous minimum ≥ 1.7 mg/l	
Deep channel	Instantaneous minimum ≥ 1 mg/l	June 1 - September 30

[1]In applying this open water instantaneous criterion to the Chesapeake Bay and its tidal tributaries where the existing water quality for dissolved oxygen exceeds an instantaneous minimum of 3.2 mg/l, that higher water quality for dissolved oxygen shall be provided antidegradation protection in accordance with 9VAC25-260-30 A 2.

[2]Open-water dissolved oxygen criteria attainment is assessed separately over two time periods: summer (June 1- September 30) and nonsummer (October 1-May 31) months.

B. Submerged aquatic vegetation (SAV) and water clarity. Attainment of the shallow-water submerged aquatic vegetation designated use shall be determined using any one of the following criteria:

Designated Use	Chesapeake Bay Program Segment	SAV Acres[1]	Percent Light-Through-Water[2]	Water Clarity Acres[1]	Temporal Application
Shallow water submerged aquatic vegetation use	CB5MH	7,633	22%	14,514	April 1 - October 31
	CB6PH	1,267	22%	3,168	March 1 - November 30
	CB7PH	15,107	22%	34,085	March 1 - November 30
	CB8PH	11	22%	28	March 1 - November 30
	POTTF	2,093	13%	5,233	April 1 - October 31
	POTOH	1,503	13%	3,758	April 1 - October 31
	POTMH	4,250	22%	10,625	April 1 - October 31
	RPPTF	66	13%	165	April 1 - October 31
	RPPOH	4	13%	10	April 1 - October 31
	RPPMH	1700	22%	5000	April 1 - October 31
	CRRMH	768	22%	1,920	April 1 - October 31
	PIAMH	3,479	22%	8,014	April 1 - October 31
	MPNTF	85	13%	213	April 1 - October 31
	MPNOH	-	-	-	-
	PMKTF	187	13%	468	April 1 - October 31
	PMKOH	-	-	-	-
	YRKMH	239	22%	598	April 1 - October 31
	YRKPH	2,793	22%	6,982	March 1 - November 30
	MOBPH	15,901	22%	33,990	March 1 - November 30
	JMSTF2	200	13%	500	April 1 - October 31
	JMSTF1	1000	13%	2500	April 1 - October 31
	APPTF	379	13%	948	April 1 - October 31
	JMSOH	15	13%	38	April 1 - October 31
	CHKOH	535	13%	1,338	April 1 - October 31
	JMSMH	200	22%	500	April 1 - October 31
	JMSPH	300	22%	750	March 1 - November 30
	WBEMH	-	-	-	-
	SBEMH	-	-	-	-
	EBEMH	-	-	-	-
	ELIPH	-	-	-	-
	LYNPH	107	22%	268	March 1 - November 30
	POCOH	-	-	-	-

	POCMH	4,066	22%	9,368	April 1 - October 31
	TANMH	13,579	22%	22,064	April 1 - October 31

[1]The assessment period for SAV and water clarity acres shall be the single best year in the most recent three consecutive years. When three consecutive years of data are not available, a minimum of three years within the data assessment window shall be used.

[2]Percent light-through-water = $100e^{(-KdZ)}$ where K_d is water column light attenuation coefficient and can be measured directly or converted from a measured secchi depth where K_d = 1.45/secchi depth. Z = depth at location of measurement of K_d.

C. Chlorophyll a.

Designated Use	Chlorophyll a Narrative Criterion	Temporal Application
Open water	Concentrations of chlorophyll a in free-floating microscopic aquatic plants (algae) shall not exceed levels that result in undesirable or nuisance aquatic plant life~~,~~ or render tidal waters unsuitable for the propagation and growth of a balanced, indigenous population of aquatic life or otherwise result in ecologically undesirable water quality conditions such as reduced water clarity, low dissolved oxygen, food supply imbalances, proliferation of species deemed potentially harmful to aquatic life or humans, or aesthetically objectionable conditions.	March 1 - September 30
~~*~~See 9VAC25-260-310 special standard bb for numerical chlorophyll criteria for the tidal James River.		

D. Implementation.

1. Chesapeake Bay program segmentation scheme as described in Chesapeake Bay Program, 2004 Chesapeake Bay Program Analytical Segmentation Scheme-Revisions, Decisions and Rationales: 1983–2003, CBP/TRS 268/04, EPA 903-R-04-008, Chesapeake Bay Program, Annapolis, Maryland, and the Chesapeake Bay Program published 2005 addendum (CBP/TRS 278-06; EPA 903-R-05-004) is listed ~~below~~ in the following table and shall be used as the spatial assessment unit to determine attainment of the criteria in this section for each designated use.

Chesapeake Bay Segment Description	Segment Name[1]	Chesapeake Bay Segment Description	Segment Name[1]
Lower Central Chesapeake Bay	CB5MH	Mobjack Bay	MOBPH
Western Lower Chesapeake Bay	CB6PH	Upper Tidal Fresh James River	JMSTF2
Eastern Lower Chesapeake Bay	CB7PH	Lower Tidal Fresh James River	JMSTF1
Mouth of the Chesapeake Bay	CB8PH	Appomattox River	APPTF
Upper Potomac River	POTTF	Middle James River	JMSOH
Middle Potomac River	POTOH	Chickahominy River	CHKOH
Lower Potomac River	POTMH	Lower James River	JMSMH
Upper Rappahannock River	RPPTF	Mouth of the James River	JMSPH
Middle Rappahannock River	RPPOH	Western Branch Elizabeth River	WBEMH
Lower Rappahannock River	RPPMH	Southern Branch Elizabeth River	SBEMH
Corrotoman River	CRRMH	Eastern Branch Elizabeth River	EBEMH
Piankatank River	PIAMH	Lafayette River	LAFMH
Upper Mattaponi River	MPNTF	Mouth of the Elizabeth River	ELIPH

Lower Mattaponi River	MPNOH	Lynnhaven River	LYNPH
Upper Pamunkey River	PMKTF	Middle Pocomoke River	POCOH
Lower Pamunkey River	PMKOH	Lower Pocomoke River	POCMH
Middle York River	YRKMH	Tangier Sound	TANMH
Lower York River	YRKPH		

[1]First three letters of segment name represent Chesapeake Bay segment description, letters four and five represent the salinity regime of that segment (TF = Tidal Fresh, OH = Oligohaline, MH = Mesohaline, and PH = Polyhaline) and a sixth space is reserved for subdivisions of that segment.

2. The assessment period shall be the most recent three consecutive years. When three consecutive years of data are not available, a minimum of three years within the data assessment window shall be used.

3. Attainment of these criteria shall be assessed through comparison of the generated cumulative frequency distribution of the monitoring data to the applicable criteria reference curve for each designated use. If the monitoring data cumulative frequency curve is completely contained inside the reference curve, then the segment is in attainment of the designated use. The reference curves and procedures to be followed are published in the USEPA, Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-03-002, April 2003 and the 2004 (EPA 903-R-03-002 October 2004), 2007 (CBP/TRS ~~285-07~~ 285/07, EPA 903-R-07-003), 2007 (CBP/TRS 288/07, EPA 903-R-07-005), 2008 (CBP/TRS 290-08, EPA 903-R-08-001), ~~and~~ 2010 (CBP/TRS 301-10, EPA 903-R-10-002), and 2017 (CBP/TRS 320-17, EPA 903-R-17-002) addenda. An exception to this requirement is in measuring attainment of the SAV and water clarity acres, which are compared directly to the criteria.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-260)

Chesapeake Bay Program Analytical Segmentation Scheme - Revisions, Decisions and Rationales 1983-2003, EPA 903-R-04-008, CBP/TRS 268/04, October 2004, US EPA Region III Chesapeake Bay Office~~.~~

Chesapeake Bay Program Analytical Segmentation Scheme - Revisions, Decisions and Rationales 1983-2003, EPA 903-R-05-004, CBP/TRS 278-06, 2005 Addendum, December 2005, US EPA Region III Chesapeake Bay Office~~.~~

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-03-002, April 2003 and 2004 Addendum, October 2004, US EPA Region III Chesapeake Bay Office

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-07-003, CBP/TRS 285/07 2007 Addendum, July 2007, US EPA Region III Chesapeake Bay Office~~.~~

Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability, EPA 903-R-03-004, October 2003 and 2004 Addendum, October 2004, US EPA Region III Chesapeake Bay Office~~.~~

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries - 2007 Chlorophyll Criteria Addendum, EPA 903-R-07-005, CBP/TRS 288/07, November 2007, U.S. EPA Region III Chesapeake Bay Office~~.~~

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries - 2008 Technical Support for Criteria Assessment Protocols Addendum, EPA 903-R-08-001, CBP/TRS 290-08, September 2008, U.S. EPA Region III Chesapeake Bay Office~~.~~

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries - 2010 Technical Support for Criteria Assessment Protocols Addendum, EPA 903-R-10-002, CBP/TRS 301-10, May 2010, U.S. EPA Region III Chesapeake Bay Office~~.~~

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries - 2017 Technical Addendum, EPA 903-R-17-002, CBP/TRS 320-17, November 2017, U.S. EPA Region III Chesapeake Bay Office

VA.R. Doc. No. R19-5476; Filed November 2, 2018, 1:07 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Final Regulation

REGISTRAR'S NOTICE: The Board for Barbers and Cosmetology is claiming an exemption from Article 2 of the Administrative Process Act in accordance § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Board for Barbers and Cosmetology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC41-70. Esthetics Regulations (amending 18VAC41-70-80, 18VAC41-70-90, 18VAC41-70-280).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: January 1, 2019.

Agency Contact: Stephen Kirschner, Regulatory Operations Administrator, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments correct technical errors by replacing references to barber-specific or cosmetology-specific terms with appropriate esthetics terminology.

18VAC41-70-80. General requirements for a spa license.

A. Any firm wishing to operate an esthetics spa shall obtain a spa license in compliance with § 54.1-704.1 of the Code of Virginia, and shall meet the following qualifications in order to receive a license:

1. The applicant, and all members of the responsible management, shall be in good standing as a licensed spa in Virginia and all other jurisdictions where licensed. The applicant and all members of the responsible management shall disclose to the board at the time of application for licensure, any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any esthetics spa or practice of the profession. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of responsible management has been previously licensed in Virginia as an esthetics spa.

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of an esthetics spa. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia esthetics license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

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.

5. The applicant shall disclose the firm's responsible management.

B. ~~Shop or salon~~ Spa licenses are issued to firms as defined in this chapter and shall not be transferable and shall bear the same name and address of the business. Any changes in the name or address of the spa shall be reported to the board in writing within 30 days of such changes. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the

board within 30 days of the change. Additionally, the firm shall apply for a new license, within 30 days of the change in the business entity. Such changes include:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Conversion, formation, or dissolution of a corporation, a limited liability company, ~~or~~ association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed ~~shop or salon~~ spa for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

18VAC41-70-90. General requirements for a school license.

A. Any firm wishing to operate an esthetics school shall submit an application to the board at least 60 days prior to the date for which approval is sought, obtain a school license in compliance with § 54.1-704.2 of the Code of Virginia, and meet the following qualifications in order to receive a license:

1. The applicant and all members of the responsible management shall be in good standing as a licensed school in Virginia and all other jurisdictions where licensed. The applicant and all members of the responsible management shall disclose to the board at the time of application for licensure, any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any esthetics school or practice of the profession. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant or any member of the responsible management has been previously licensed in Virginia as an esthetics school.

Upon review of the applicant's and all members of the responsible management's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of an esthetics school. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia esthetics license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

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.

5. The applicant shall disclose the firm's responsible management.

B. Esthetics school licenses are issued to firms as defined in this chapter and shall not be transferable and shall bear the same name and address as the school. Any changes in the name or the address of record or principal place of business of the school shall be reported to the board in writing within 30 days of such change. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board. The name of the school must indicate that it is an educational institution. All signs or other advertisements must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license within 30 days of the change in business entity. Such changes include:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. ~~Barber schools, cosmetology schools, nail schools, or waxing~~ Esthetics schools under the Virginia Department of Education shall be exempted from licensure requirements.

F. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

18VAC41-70-280. Grounds for license revocation, probation, or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.

The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or temporary license holder~~, and~~; suspend, place on probation, ~~or~~ revoke, or refuse to renew or reinstate any license, certificate, or temporary license~~;~~; or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and this chapter if the board finds that the licensee, certificate holder, permit holder, or applicant:

1. Is incompetent, negligent, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as an esthetician;

2. Is convicted of fraud or deceit in the practice or teaching of esthetics, fails to teach in accordance with the board-approved curriculum, or fails to comply with 18VAC41-70-190 D when making an assessment of credit hours awarded;

3. Attempts to obtain, obtained, renewed, or reinstated a license, certificate, or temporary license by false or fraudulent representation;

4. Violates ~~or~~, induces others to violate, or cooperates with others in violating~~,~~ any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any esthetician may practice or offer to practice;

5. Offers, gives, or promises anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing esthetics or master esthetics;

6. Fails to respond to the board or any of its agents or provides false, misleading, or incomplete information to an inquiry by the board or any of its agents;

7. Fails or refuses to allow the board or any of its agents to inspect during reasonable hours any licensed ~~shop, salon,~~ spa or school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter;

8. Fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's, certificate holder's, temporary license holder's, applicant's, or owner's possession or maintained in accordance with this chapter;

9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or temporary license;

10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;

11. Fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license or temporary license in connection with a disciplinary action in any jurisdiction or of any license or temporary license that has been the subject of disciplinary action in any jurisdiction;

12. Has been convicted or found guilty, regardless of the manner of adjudication, in Virginia or any other jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible

in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt;

13. Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of convictions as stated in subdivision 12 of this section;

14. Allows, as responsible management of a spa or school, a person who has not obtained a license or a temporary permit to practice unless the person is duly enrolled as a registered apprentice;

15. Allows, as responsible management of a school, a person who has not obtained an instructor certificate to practice as an esthetics or a master esthetics instructor;

16. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or any local, state, or federal law or regulation governing the standards of health and sanitation for the practices of esthetics or master esthetics~~,~~ or the operation of esthetics spas; or

17. Fails to comply with all procedures established by the board and the testing service with regard to conduct at any board examination.

VA.R. Doc. No. R19-5617; Filed November 1, 2018, 10:44 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Final Regulation

Title of Regulation: **18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-510; adding 18VAC65-20-581).**

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Effective Date: December 26, 2018.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4479, FAX (804) 527-4471, or email fanbd@dhp.virginia.gov.

Summary:

The amendments clarify requirements for the express permission needed to embalm a body and for the proper refrigeration of a human body.

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 VII
Standards for Embalming and Refrigeration

18VAC65-20-510. Embalming ~~report~~.

A. In accordance with the provisions of subdivision 26 of § 54.1-2806 and subsection B of § 54.1-2811.1 of the Code of Virginia, express permission by a next of kin for embalming means written authorization to embalm as a specific and separate statement on a document or contract provided by the funeral establishment. Express permission may include direct, verbal authorization to embalm, provided it is followed as soon as possible by a written document or statement signed by the next of kin confirming the verbal authorization to embalm and including the time, date, and name of the person who gave verbal authorization.

B. Every funeral establishment shall record and maintain a separate, identifiable report for each embalming procedure conducted, which shall at a minimum include the following information:

1. The name of the deceased and the date of death;

2. The date and location of the embalming;

3. The name and signature of the embalmer and the Virginia license number of the embalmer; and

4. If the embalming was performed by a funeral service intern, the name and signature of the supervisor.

18VAC65-20-581. Refrigeration requirements.

A. If a dead human body is to be in the possession of a funeral establishment or crematory for more than 48 hours from the time the funeral establishment or crematory takes physical possession of the body until embalming, cremation, or burial, the body shall be placed and maintained in refrigeration in a mechanical refrigeration unit suitable for storing human remains in accordance with subsection B of § 54.1-2811.1 of the Code of Virginia.

B. The mechanical refrigeration unit may be located in the funeral establishment or crematory, or the funeral establishment or crematory may enter into an agreement or contract with another funeral establishment, crematory, or other licensed entity for refrigeration in a mechanical refrigeration unit.

C. Evidence of compliance with the requirement for refrigeration shall be maintained as a log entry or other documentation indicating times of placement in and removal of a body [~~in~~ from] refrigeration.

VA.R. Doc. No. R17-5042; Filed November 3, 2018, 8:14 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Proposed Regulation

Title of Regulation: **22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (amending 22VAC40-201-10, 22VAC40-201-100, 22VAC40-201-190).**

Statutory Authority: §§ 63.2-217 and 63.2-319 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 25, 2019.

Agency Contact: Em Parente, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7895, FAX (804) 726-7538, or email em.parente@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia requires the State Board of Social Services to adopt such regulations as may be necessary to carry out the purpose of Title 63.2 of the Code of Virginia. This regulatory action is to comply with Chapters 187, 200, and 203 of the 2017 Acts of Assembly

Purpose: The proposed action updates the regulation to incorporate the name change to the Virginia Birth Father Registry throughout Title 63.2 of the Code of Virginia and to include the process of registration for the putative father (Chapter 200 of the 2017 Acts of Assembly). This regulatory action is integral to compliance with current state laws. Changing the name to the Virginia Birth Father Registry will eliminate confusion and better represent the purpose of the registry, which protects the rights of a putative father by providing notification of court proceedings for termination of parental rights and adoption regarding a child that he may have fathered and potentially giving him an opportunity to be in his child's life.

Health insurance is integral in providing for the health, safety, and welfare of youth aging out of foster care. A proposed revision to the regulation will ensure compliance with Chapter 203 of the 2017 Acts of Assembly and direct local departments of social services to enroll youth in foster care into Medicaid when the youth turns 18 years old. Additionally, the feedback from the survey of youth aging out of foster care will be used to strengthen and improve the state's foster care program (Chapter 187 of the 2017 Acts of Assembly).

Substance: This proposed regulatory action incorporates technical corrections to language and processes necessary to ensure consistency with the Code of Virginia and requirements that have become law since the introduction of the current permanency services regulation. The proposed amendments (i) change the name from the Putative Father Registry to the Virginia Birth Father Registry; (ii) require that youth turning 18 years old in foster care shall be enrolled in Medicaid, provided they are eligible and do not object; and (iii) require that youth turning 18 years old in foster care be given the opportunity to participate in a survey to provide feedback on their experiences in foster care.

Issues: The proposed regulatory action protects the rights of birth fathers by clarifying the registration timeline for the Virginia Birth Father Registry. The primary advantage of the action to the public, agency, and Commonwealth is that the regulation will be consistent with statutory and federal requirements that seek to protect the safety and well-being of vulnerable children. This regulatory action poses no disadvantages to the public or the Commonwealth as the amendments provide for the safety of children who turn 18 years old while in foster care by ensuring that they are enrolled in Medicaid and are provided an opportunity to give feedback about their experience in foster care through a survey.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to incorporate three recent legislative changes into the regulation: Chapters 187, 200, and 203 of the 2017 Acts of Assembly.

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

Estimated Economic Impact. This permanency regulation provides standards for Local Departments of Social Services (LDSS) for prevention, foster care, adoption, and independent living services. The proposed action incorporates three recent legislative changes as they apply to such services.

Chapter 187 of the 2017 Acts of Assembly[1] mandated that a youth aging out of foster care (e.g. youth turning 18) be given the opportunity to participate in a survey to provide feedback regarding his or her experience while in foster care. In a given year, there are approximately 500 youth in foster care who turn 18. Of the 500, how many may choose to participate in the survey is not known, but the Virginia Department of Social Services (VDSS) considers more than a 30% response rate as unlikely. VDSS plans to have about 30 questions on the survey. The purpose of the survey is to receive feedback from the youth, identify areas for improvement, and improve experiences while in foster care. VDSS estimates that one-half of a full-time position to analyze the survey results on an ongoing basis would be needed. However, the additional staff support needed to analyze the survey data will be absorbed within existing resources.

Additionally, Chapter 200 of the 2017 Acts of Assembly[2] changed the name of the Putative Father Registry to Virginia

Birth Father Registry and added new language on what is considered to be a timely registration. The Board proposes to replace all instances of "Putative Father Registry" with "Virginia Birth Father Registry" in the regulation and add new language to incorporate what is considered a timely registration. The consistency between the regulation and the legislation should be beneficial.

Finally, Chapter 203 of the 2017 Acts of Assembly[3] requires youth who turn 18 years old in foster care to be enrolled in Medicaid. When the adolescents in foster care transition to adulthood, they lose Medicaid eligibility as children but continue to be eligible under other categories. The legislation requires the LDSS to ensure that such youth are enrolled in Medicaid, unless they object or are otherwise ineligible for Medicaid services. The main impact of this change is to increase the likelihood of continued Medicaid coverage of such youth in foster care.

Businesses and Entities Affected. There are approximately 500 youth in foster or adoptive care that turn 18 in a given year. There are 2,411 individuals who are currently registered in the Virginia Birth Father Registry.

Localities Particularly Affected. The proposed amendments do not affect any particular locality more than others.

Projected Impact on Employment. The proposed survey requirement is estimated to require one-half of full-time position on an ongoing basis but will be absorbed by the existing employees. The other proposed amendments should not have any significant effect on employment.

Effects on the Use and Value of Private Property. The proposed amendments should not have any significant effect on the use and value of private property.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments do not affect small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not have adverse effects on small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not have adverse impacts on businesses.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

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[1]http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0187

[2]http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0200

[3]http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0203

Agency's Response to 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 conform the permanency regulation to three acts of the 2017 Session of the General Assembly by (i) changing the name of the Putative Father Registry to the Virginia Birth Father Registry (Chapter 200 of the 2017 Acts of Assembly); (ii) requiring that youth turning 18 years old in foster care be enrolled in Medicaid, provided they are eligible and do not object (Chapter 203 of the 2017 Acts of Assembly); and (iii) requiring that youth turning 18 years old in foster care be given the opportunity to participate in a survey to provide feedback on their experience in foster care (Chapter 187 of the 2017 Acts of Assembly).

22VAC40-201-10. Definitions.

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

"Administrative panel review" means a review of a child in foster care that the local board conducts on a planned basis pursuant to § 63.2-907 of the Code of Virginia to evaluate the current status and effectiveness of the objectives in the service plan and the services being provided for the immediate care of the child and the plan to achieve a permanent home for the child. The administrative review may be attended by the birth parents or prior custodians and other interested individuals significant to the child and family as appropriate.

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment provided to adoptive parents or other persons on behalf of a child with special needs who meets federal or state requirements to receive such payments.

"Adoption assistance agreement" means a written agreement between the local board and the adoptive parents of a child with special needs or in cases in which the child is in the

custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency, and the adoptive parents that sets out the payment and services that will be provided to benefit the child in accordance with Chapter 13 (§ 63.2-1300 et seq.) of Title 63.2 of the Code of Virginia.

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the juvenile court every six months following termination of parental rights until the adoption is final.

"Adoptive home" means any family home selected and approved by a parent, local board, or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption.

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person ~~under~~ younger than 18 years of age.

"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. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to adoption assistance means a child who meets the definition of a child with special needs set forth in ~~§§~~ § 63.2-1300 or 63.2-1301 B of the Code of Virginia.

"Children's Services Act" or "CSA" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth.

"Claim for benefits," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means (i) foster care maintenance, including enhanced maintenance; (ii) the services set forth in a court approved foster care service plan, the foster care services identified in an individual family service plan developed by a family assessment and planning team or other multi-disciplinary team pursuant to the Children's Services Act (§ 2.2-5200 et seq. of the Code of Virginia), or a transitional living plan for independent living services; (iii) the placement of a child through an agreement with the child's parents or guardians, where legal custody remains with the parents or guardians; (iv) foster care prevention services as set out in a prevention service plan; or (v) placement of a child for adoption when an approved family is outside the locality with the legal custody of the child, in accordance with 42 USC § 671(a)(23).

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

"Community Policy and Management Team" or "CPMT" means a team appointed by the local governing body pursuant to Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

"Concurrent permanency planning" means utilizing a structured case management approach in which reasonable efforts are made to achieve a permanency goal, usually a reunification with the family, simultaneously with an established alternative permanent plan for the child.

"Department" means the state Department of Social Services.

"Denied," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means the refusal to provide a claim for benefits.

"Dually approved" means applicants have met the required standards to be approved as a foster and adoptive family home provider.

"Entrustment agreement" means an agreement that the local board enters into with the parent~~, parents,~~ or guardian to place the child in foster care either to terminate parental rights or for the temporary care and placement of the child. The agreement specifies the conditions for the care of the child.

"Family assessment and planning team" or "FAPT" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs. The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

"Foster care" means 24-hour substitute care for children in the custody of the local board or who remain in the custody of their parents, but are placed away from their parents or guardians and for whom the local board has placement and care responsibility through a noncustodial agreement.

"Foster care maintenance payments" means payments to cover those expenses made on behalf of a child in foster care including the cost of, and the cost of providing, food, clothing, shelter, daily supervision, school supplies, a child's incidentals, reasonable travel to the child's home for visitation, and reasonable travel to remain in the school in which the child is enrolled at the time of the placement. The term also includes costs for children in institutional care and costs related to the child of a child in foster care as set out in 42 USC § 675.

"Foster care plan" means a written document filed with the court in accordance with § 16.1-281 of the Code of Virginia that describes the programs, care, services, and other support that will be offered to the child and his parents and other prior custodians. The foster care plan defined in this definition is the case plan referenced in 42 USC § 675.

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of casework, treatment, and community services, including independent living services, for a planned period of time to a child meeting the requirements as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a child for whom the local board has assumed placement and care responsibilities through a noncustodial foster care agreement, entrustment, or court commitment before 18 years of age.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which ~~he~~ the child does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local department of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual family service plan" or "IFSP" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children" or "ICPC" means a uniform law that has been enacted by all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands ~~which~~ that establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the child-placing agency obtains information required by § 63.2-1208 of the Code of Virginia about the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court

containing a recommendation on the action to be taken by the court.

"Local board" means the local board of social services in each county and city in the Commonwealth required by § 63.2-300 of the Code of Virginia.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the parent or guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs as set out in § 63.2-1301 D of the Code of Virginia.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

~~"Putative Father Registry" means a confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.~~

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes placements in children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

"SSI" means Supplemental Security Income.

"State pool funds" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Virginia Birth Father Registry" means the established confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.

"Visitation and report" means the visits conducted pursuant to § 63.2-1212 of the Code of Virginia and the written report of the findings made in the course of the visitation. The report is filed in the circuit court in accordance with § 63.2-1212 of the Code of Virginia.

"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between 16 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services pursuant to § 63.2-905.1 of the Code of Virginia. "Youth" may also mean an individual older than the age of 16 years who is the subject of an adoption assistance agreement.

22VAC40-201-100. Providing independent living services.

A. Independent living services shall be identified by the youth; foster or adoptive family; local department; service providers; legal community; and other interested individuals and shall be included in the service plan. Input from the youth in assembling these individuals and developing the services is required.

B. Independent living services shall be provided to all youth ages 14 to 18 years and shall be offered to any person between 18 and 21 years of age who is in the process of transitioning from foster care to self-sufficiency.

C. Independent living services include education, vocational training, employment, mental and physical health services, transportation, housing, financial support, daily living skills, counseling, and development of permanent connections with adults.

D. Local departments shall assess the youth's independent living skills and needs and incorporate the assessment results into the youth's service plan.

E. A youth placed in foster care before the age of 18 years may continue to receive independent living services from the local department between the ages of 18 and 21 years if:

1. The youth is making progress in an educational or vocational program, has employment, or is in a treatment or training program; and

2. The youth agrees to participate with the local department ~~in~~ (i) in developing a service agreement and (ii) by signing the service agreement. The service agreement shall require, at a minimum, that the youth's living arrangement shall be approved by the local department and that the youth shall cooperate with all services; or

3. The youth is in permanent foster care and is making progress in an educational or vocational program, has employment, or is in a treatment or training program.

F. A youth age 16 years and older is eligible to live in an independent living arrangement provided the local department utilizes the independent living arrangement placement criteria developed by the department to determine that such an arrangement is in the youth's best interest. An eligible youth may receive an independent living stipend to assist him with the costs of maintenance. The eligibility criteria for receiving an independent living stipend will be developed by the department.

G. Any person who was committed or entrusted to a local department and chooses to discontinue receiving independent living services after age 18 years may request a resumption of independent living services provided that (i) the person has not yet reached 21 years of age and (ii) the person has entered into a written agreement, less than 60 days after independent living services have been discontinued, with the local board regarding the terms and conditions of his receipt of independent living services. Local departments shall provide any person who chooses to leave foster care or terminate independent living services before his 21st birthday written notice of his right to request restoration of independent living services in accordance with § 63.2-905.1 of the Code of Virginia by including such written notice in the person's transition plan.

H. Local departments shall assist eligible youth in applying for educational and vocational financial assistance. Educational and vocational specific funding sources shall be used prior to using other sources.

I. Local departments shall provide independent living services to any person between 18 and 21 years of age who:

1. Was in the custody of the local board immediately prior to his commitment to the Department of Juvenile Justice;

2. Is in the process of transitioning from a commitment to the Department of Juvenile Justice to self-sufficiency; and

3. Provides written notice of his intent to receive independent living services and enters into a written agreement ~~which~~ that sets forth the terms and conditions for the provision of independent living services with the local board within 60 days of his release from commitment.

J. Every six months a supervisory review of service plans for youth receiving independent living services after age 18 shall be conducted to assure the effectiveness of service provision.

K. The local department shall ensure that any youth in foster care on the youth's 18th birthday is enrolled in Medicaid, unless the youth objects or is otherwise ineligible.

L. The local department shall ensure that any youth who turns 18 years of age while in foster care is given the opportunity to complete a survey to provide feedback regarding the youth's experience in foster care.

22VAC40-201-190. Virginia ~~Putative~~ Birth Father Registry.

A. The department shall establish and maintain a putative father registry ~~which~~ that is a confidential database.

B. A search of the Virginia ~~Putative~~ Birth Father Registry shall be conducted for all adoptions except when the child has been adopted according to the laws of a foreign country or when the child was placed in Virginia from a foreign country for the purpose of adoption in accordance with § 63.2-1104 of the Code of Virginia.

C. Any petitioner who files a petition for termination of parental rights or for an adoption proceeding shall request a search of the Virginia ~~Putative~~ Birth Father Registry. The certificate of search and finding must be filed with the court before an adoption or termination of parental rights proceeding can be concluded.

D. Any man who desires to be notified of an adoption proceeding or termination of parental rights regarding a child that he may have fathered shall register with the Virginia Birth Father Registry.

E. A registration is timely when it is received by the department within:

1. 10 days of the child's birth;

2. 10 days of the date of personal service of the written notice required under subsection F of § 63.2-1250 or within 13 days of the certified mailing date of such written notice; or

3. 10 days upon the registrant's discovery of misrepresentation by the birth mother that led him to believe that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) the child died when in fact the child is alive.

~~D.~~ F. The department may require additional information to determine that the individual requesting information from the ~~Putative~~ Virginia Birth Father Registry is eligible to receive information in accordance with § 63.2-1251 of the Code of Virginia.

VA.R. Doc. No. R18-5305; Filed October 26, 2018, 11:59 a.m.

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TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Fast-Track Regulation

Title of Regulation: **23VAC10-390. Virginia Soft Drink Excise Tax Regulations (amending 23VAC10-390-40).**

Statutory Authority: §§ 58.1-203 and 58.1-1703 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 25, 2019.

Effective Date: February 11, 2019.

Agency Contact: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation. The authority for the current regulatory action is discretionary.

Purpose: As a result of a periodic review of the Virginia Soft Drink Excise Tax Regulations initiated by the department on June 27, 2016, and completed July 18, 2016, the department has determined that 23VAC10-390-40, relating to collection of the soft drink excise tax, should be amended. This regulatory action is necessary to reflect legislative changes and administrative procedures affecting the collection of the soft drink excise tax. In addition, some existing regulatory language is unnecessary because it provides no additional guidance regarding clear and unambiguous statutes. Therefore, this regulatory action will update the regulation to conform to legislative changes and administrative procedures. It will also repeal language that is duplicative or outdated. The amendment of this regulation does not reflect a change in existing tax policy and will have no impact on the administration of the tax.

As this regulatory action does not reflect a change in existing departmental policy, it will have no effect on the health, safety, and welfare of citizens.

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is intended for regulations that are expected to be noncontroversial. As the regulation is being amended to reflect current law and will not make any changes to the department's current policy regarding the soft drink excise tax, this action is not expected to be controversial.

Substance: The amendments relate to collection of the soft drink excise tax. Virginia imposes an annual excise tax on wholesalers and distributors of carbonated soft drinks. The tax is based on the gross receipts of each wholesaler and distributor from the sale of such soft drinks during the year. The Code of Virginia requires that this tax be collected by the department in the same manner as the income tax is collected.

This regulatory action will amend 23VAC10-390-40 of the Virginia Soft Drink Excise Tax Regulations to conform to current law and existing administrative procedures regarding the collection of the tax and to strike provisions that are no longer accurate due to changes in the law. The affected provisions deal with the collection of the soft drink excise tax; return due dates; and extensions, penalties, and interest that may apply for failure to timely file or pay the amount of tax due.

During the 2005, 1999, 1991, and 1989 Sessions of the General Assembly, several modifications were made to the way the Virginia income tax is collected:

• Chapter 100 of the 2005 Acts of Assembly eliminated the requirement for income taxpayers to file an extension form with the department before they could elect to file their income tax return on extension.

• Chapters 146 and 180 of the 1999 Acts of Assembly modified § 58.1-15 of the Code of Virginia by equalizing the rate of interest charged on assessments and the rate of interest paid on refunds.

• Chapter 316 of the 1991 Acts of Assembly modified § 58.1-15 of the Code of Virginia relating to the rate of interest charged on assessments or paid on refunds. This legislation also increased the penalty for late-filed income tax returns and the penalty for late payment of the income tax from 5.0% to 6.0%.

• Chapter 629 of the 1989 Acts of Assembly modified the penalty for late-filed income tax returns from 10% to 5.0% per month for up to five months for individuals and from $100 to the greater of $100 or 5.0% per month for up to five months for corporations. This legislation also modified the penalty for late paying an income tax liability from 5.0% to 5.0% per month for up to five months.

Because this regulation was promulgated prior to the enactment of this legislation, it is inconsistent with these legislative changes. Other amendments in this action include removing language that is unnecessary because it provides no additional guidance to clear and unambiguous statutes. Therefore, this regulatory action will update language to conform to statute and current administrative procedures, and it will repeal other language that is duplicative or outdated. Amending this section does not reflect any change in existing tax policy and will have no impact on the administration of tax. Because of this, the amendment of this section is not expected to be controversial.

Issues: This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by amending a regulation section that currently does not conform to statute and current administrative procedures and by striking obsolete language. Therefore, the amendments will result in no disadvantage to the public or the Commonwealth.

Small Business Impact Review Report of Findings: This fast-track regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As a result of a periodic review,[1] the Department of Taxation proposes to repeal provisions that are no longer accurate due to statutory changes or are duplicative of the statutory language.

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

Estimated Economic Impact. This regulation contains general provisions applicable to the Soft Drink Excise Tax. Numerous statutory changes in the 1989, 1991, 1999, and 2005 Virginia General Assembly Sessions amended the Soft Drink Excise Tax and rendered the current regulatory language inaccurate.[2] In addition, some of the current regulatory provisions are unnecessary because they are duplicative of information provided in the statute. The proposed changes will update the regulation so that it is consistent with the statute. Since this regulatory action does not reflect any change in current tax policy or on the administration of the soft drink excise tax, no economic effect is expected other than potentially reducing confusion by eliminating conflicting information between the Code of Virginia and the regulation.

Businesses and Entities Affected. This regulation applies to approximately 70 taxpayers who file a Soft Drink Excise Tax return.

Localities Particularly Affected. The proposed changes do not disproportionately affect particular localities.

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

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. Of the 70 taxpayers that file Soft Drink Excise Tax returns, approximately 22 are estimated to be small businesses. The proposed regulation does not impose costs on small businesses, but is expected to benefit them by eliminating potentially confusing language between the regulation and the statute.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. No adverse effects are expected on small businesses.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

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[1]See http://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1510.

[2]See 1989 Acts of Assembly, Chapter 629,

1991 Acts of Assembly, Chapter 316,

http://lis.virginia.gov/cgi-bin/legp604.exe?991+ful+CHAP0180,

http://lis.virginia.gov/cgi-bin/legp604.exe?051+ful+CHAP0100.

Agency's Response to Economic Impact Analysis: The Department of Taxation agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

The amendments conform the Virginia Soft Drink Excise Tax Regulations to current law and existing administrative procedures regarding the collection of the tax and strike provisions that are no longer accurate due to changes in law and procedures, including affecting provisions for (i) collection of the soft drink excise tax; (ii) return due dates; and (iii) extensions, penalties, and interest charged for failure to timely file or pay the amount of tax due. This regulatory action does not reflect any change in current tax policy.

23VAC10-390-40. Collection.

A. The soft drink excise tax is collected annually by the Department of Taxation. A ~~check~~ payment for the amount of tax~~, and if applicable, penalty and interest, should~~ shall be made ~~payable~~ to the Department of Taxation ~~and submitted with the properly filed return~~ no later than the due date prescribed in subsection B of this section.

B. Returns ~~are required to~~ shall be filed with the Department of Taxation~~, P.O. Box 1880, Richmond, Virginia 23282-1880,~~ on or before the ~~statutory~~ original due date ~~(without extension)~~ for filing Virginia individual income tax returns under § 58.1-341 of the Code of Virginia, or if the taxpayer is a corporation, for filing Virginia corporate income tax returns under § 58.1-441 of the Code of Virginia.

~~1. If taxpayer has an extension of time for filing his income tax return from the Internal Revenue Service, the filing date for the soft drink excise tax may be extended to the same as the federal date plus 30 days. In order to receive an extension of time for filing the return, a request for extension must be made to the Department of Taxation prior to the original due date of the return.~~

~~2. If an extension of filing time is granted, interest at the rate established pursuant to Section 6621 of the Internal Revenue Code of 1954, as amended, accrues from the date the return was originally due to be filed to the date of payment.~~

C. A taxpayer may elect an extension of time within which to file the soft drink excise tax return to the extended due date set forth and in the manner prescribed for filing Virginia individual income tax returns on extension under § 58.1-344 of the Code of Virginia, or if the taxpayer is a corporation, for filing Virginia corporate income tax returns on extension under § 58.1-453 of the Code of Virginia.

1. If the full amount is not paid on or before the original due date, the penalty imposed by subsection D of this section for failure to pay when due the full amount shall apply regardless of whether the taxpayer properly elected to utilize an extension. Interest at the rate established pursuant to § 58.1-15 of the Code of Virginia accrues from the date the return was originally due to be filed to the date of payment.

2. If the return is not filed or the full amount of the tax due is not paid on or before the extended due date elected pursuant to this subsection, the penalty imposed by subsection D of this section for failure to file a return and for late filing shall apply as if no extension had been elected.

D. Subject to ~~the provisions of subdivisions B 1 and 2~~ subsection C of this section, penalties ~~and interest~~ are imposed for failure to file a return, for late filing, for filing a false or fraudulent return, and for failure to ~~pay when due the full amount of tax as shown on the face of the return and are assessed in the same manner as the income tax penalties imposed under Chapter 3 of Title 58.1 of the Code of Virginia~~ make full payment of the taxpayer's actual tax liability on or before the original return due date.

~~1. Penalty for failure to pay when due shall be 5.0% of the amount of unpaid tax and assessed in accordance with §§ 58.1-351 and 58.1-455.~~

~~2. Penalty for failure to file the return when due is $100 for corporations and 10% of the amount of tax assessable on the return for all others. The penalties shall be assessed in accordance with Sections 58.1-347 and 58.1-450.~~

~~3. Penalty for fraud is assessed in accordance with §§ 58.1-348, 58.1-451 and 58.1-452.~~

~~4.~~ 1. If the taxpayer is not a corporation, the nature and amount of the penalties imposed by this subsection shall be determined as if the comparable individual income tax penalties under §§ 58.1-347, 58.1-348, and 58.1-351 of the Code of Virginia apply to the soft drink excise tax rather than the individual income tax.

2. If the taxpayer is a corporation, the nature and amount of the penalties imposed by this subsection shall be determined as if the comparable corporate income tax penalties under §§ 58.1-450, 58.1-451, 58.1-452, and 58.1-455 of the Code of Virginia apply to the soft drink excise tax rather than the corporate income tax.

3. Interest is assessed on tax and applicable penalties in accordance with § 58.1-15 of the Code of Virginia.

VA.R. Doc. No. R19-4928; Filed October 24, 2018, 2:46 p.m.

EXECUTIVE ORDER NUMBER TWENTY-FOUR (2018)

Increasing Virginia's Resilience to Sea Level Rise and Natural Hazards

Importance of the Initiative

Sea level rise, land subsidence, higher average temperatures, more frequent and intense weather events, severe drought, and increased development, have increased risk and will continue to increase and exacerbate risk from natural hazards across the Commonwealth of Virginia. The number of federally declared disasters has steadily increased nationally and in Virginia. The number has experienced a 250 percent increase in federally declared disasters over the past 20 years, including declarations for flooding, hurricanes, severe storms, and wildfire.

The best available science predicts that this trend will continue to worsen. A recent report from the United Nations Intergovernmental Panel on Climate Change states that the world is likely to experience dramatic increases in coastal flooding and severe weather events. Additional studies show that water levels in the Hampton Roads region are now 18 inches higher than they were a century ago, and that they are expected to gain up to five more feet, while the land sinks as much as 7.5 inches, by 2100. That combined rise is faster than anywhere else on the East Coast. The most recent National Climate Assessment reported that the intensity, frequency, and duration of North Atlantic hurricanes, as well as the frequency of the strongest hurricanes, have all increased.

This increase in extreme weather events and natural disasters will continue to have a profound impact on Virginia. It threatens public health and safety, our environment and natural resources, and the economic wellbeing of the Commonwealth, including our ports, military installations, transportation infrastructure, tourism assets, farms, and forests. We must act now to protect lives and property from multiple threats and reduce taxpayer exposure through fiscally responsible planning.

Directive

Accordingly, by virtue of the authority vested in me as the Chief Executive by Article V of the Constitution of Virginia and under the laws of the Commonwealth, I hereby order my administration to take the following actions to increase statewide resilience to natural hazards and extreme weather:

Section 1: Making Commonwealth Holdings More Resilient

A. Designation of the Chief Resilience Officer of the Commonwealth of Virginia: The Secretary of Natural Resources shall serve as the Chief Resilience Officer of the Commonwealth of Virginia. The Chief Resilience Officer shall be responsible for planning and implementing pre-disaster mitigation strategies to reduce the near and long term impacts of natural hazards across the Commonwealth. The Chief Resilience Officer will serve as the primary point of contact on all issues relating to pre-disaster hazard mitigation and shall be responsible for coordination and planning of resilience initiatives across state government.

B. Review of Vulnerability of Commonwealth Owned Buildings: It is imperative that the Commonwealth assess the vulnerability of state-owned buildings and takes steps to improve the resilience of state-owned buildings when appropriate. To properly assess the need for resilience upgrades and adaptation strategies for state-owned buildings, the Chief Resilience Officer will develop a facility assessment process and define a data set to be used to identify vulnerability of state-owned buildings. The Secretary of Administration shall collect the identified building data to be used by the Chief Resilience Officer in determining the vulnerability of state-owned buildings, identify steps to increase the resilience of those buildings that are most at risk, and where appropriate and feasible, seek alternative locations for state operations.

C. Unified Sea Level Rise Projection for State-Owned Buildings: The Commonwealth of Virginia must have a standard approach for predicting sea level rise when scoping, designing, siting, and constructing state-owned buildings. The Chief Resilience Officer shall work collaboratively within state government and with assistance from regional, state, and national experts and stakeholders, to issue, within 180 days from issuance of this Order, a regional or statewide sea level rise projection. The standard shall apply to all projects beginning initial design for state-owned buildings, beginning on or after January 1, 2020. This standard shall apply to new construction and not renovations to existing state buildings and be applied barring extenuating circumstances as determined by the Chief Resilience Officer. In creating this standard, the Chief Resilience Officer shall consult with: the Secretary of Administration, the Secretary of Commerce and Trade, the Secretary of Finance, the Secretary of Transportation, and the Virginia Institute of Marine Science.

D. Freeboard Standard for State-Owned Buildings: The Commonwealth of Virginia must ensure the resilience of state-owned buildings by setting a minimum freeboard standard for state-owned buildings. The Chief Resilience Officer shall collaboratively work within state government and with assistance from regional, state, and national experts, and stakeholders, to issue, within 180 days from issuance of this Order, a regional or statewide freeboard standard. The standard shall apply to all projects beginning initial design for state-owned buildings beginning on or after January 1, 2020. This standard shall apply to new construction and not renovations to existing state buildings and be applied barring extenuating circumstances as determined by the Chief Resilience Officer. In creating this standard, the Chief Resilience Officer shall consult with: the Secretary of

Administration, the Secretary of Commerce and Trade, the Secretary of Finance, the Secretary of Transportation, and the Virginia Institute of Marine Science.

Section 2: Reviews, Reports, and Recommendations

A. Virginia Coastal Resilience Master Plan: The Commonwealth of Virginia has a responsibility to assist local governments in reducing flood risk through planning and implementing large scale flood protection and adaptation initiatives. The Chief Resilience Officer, with the assistance of the Special Assistant to the Governor for Coastal Adaptation and Protection, shall create and implement a Coastal Resilience Master Plan for coastal Virginia to reduce the impacts of tidal and storm surge flooding.

The plan shall:

1. Incorporate all ongoing planned and proposed federal, state, and local projects and infrastructure to reduce tidal and storm surge flooding and flood risk. Provide recommendations for additional hazard mitigation, flood control, and adaptation projects to fill in gaps and improve the preparedness and resilience of the entire coastal area of Virginia for flooding and sea level rise;

2. Be based upon the best available science and engineering;

3. Be updated and amended every five years;

4. Mitigate flood risks at the community level or greater whenever possible;

5. Employ natural and nature-based solutions to the maximum extent possible and provide guidance for land conservation efforts by identifying land providing resilience benefits along with other ecological services;

6. Consider potential areas and options for managed coastal retreat when appropriate;

7. Include detailed funding analysis with a needs assessment and recommendations for potential funding sources;

8. Conform to National Flood Insurance Program requirements and incorporate relevant sections of the floodplain protection plan required by § 10.1-602 of the Code of Virginia.

In developing the Virginia Coastal Resilience Master Plan, the Chief Resilience Officer, with the assistance of the Special Assistant to the Governor for Coastal Adaptation and Protection, shall consult with the following:

1. Local governments;

2. Relevant state agencies, boards, and advisory bodies;

3. Regional Planning District Commissions;

4. The Secure and Resilient Commonwealth Panel;

5. Federal partners, including but not limited to: the Department of Defense, including the U.S. Army Corps of Engineers; the National Atmospheric and Oceanic Administration; the Department of Transportation, the Department of Agriculture; the Department of the Interior; and the Department of Housing and Urban Development;

6. The Virginia Institute for Marine Science, the partner universities in the Virginia Sea Grant Program, the Commonwealth Center for Recurrent Flooding Resiliency; and

7. Non-governmental stakeholders including civic organizations, the business community, and non-profit organizations.

B. Review of State Pre-disaster Mitigation Programs: The Chief Resilience Officer, with the assistance of the Special Assistant to the Governor for Coastal Adaptation and Protection, shall inventory all state-run programs to encourage and implement pre-disaster mitigation. The inventory shall include pre-disaster mitigation programs for all natural hazards including flooding, wildfire, and earthquake. Within 180 days from issuance of this Order, each Cabinet Secretary shall submit to the Chief Resilience Officer a report on any and all predisaster hazard mitigation programs administered by his or her Secretariat.

1. Reports to the Chief Resilience Officer shall include: the formal title of the program, the statutory authorization for the program, a summary of the program and its goals and successes, the name of the lead staff member assigned to the program, a summary of the annual available funding for the program, and a summary of unmet funding needs.

2. Within 90 days of receiving reports from Cabinet Secretaries, the Chief Resilience Officer, with the assistance of the Special Assistant to the Governor for Coastal Adaptation and Protection, shall compile and make available to the public a comprehensive report of the findings from all secretariats, and make recommendations for improvements or additions to predisaster mitigation programs.

C. Review of Compliance with Flood Protection and Dam Safety Laws: The Director of the Department of Conservation and Recreation (DCR), in coordination with the Chief Resilience Officer, shall review DCR's implementation of the Code of Virginia, Title 10, Chapter 6, Flood Protection and Dam Safety.

This review shall include:

1. Review of existing requirements to ensure that state-owned development is appropriately protected from flooding. The review shall also ensure that state-owned development is designed so that human health, safety, and welfare, as well as the natural and beneficial uses of the floodplain, are not at an increased risk of flooding, as

authorized under state and federal law. The Director of DCR shall report his findings to the Chief Resilience Officer within 90 days from issuance of this Order, identifying critical updates to regulations, previous executive actions or guidance necessary to meet the objectives of this Order. In addition, the Director shall assess the effectiveness of current dam safety regulations in accounting for changing precipitation patterns and conditions;

2. Review of existing requirements to ensure the Commonwealth, as a participating community of the National Flood Insurance Program, continues to comply with 44 CFR § 60.11-13 and 23 CFR § 650, as authorized under state and federal law, and identifying within 90 days from issuance of this Order critical updates to regulations or guidance necessary to meet the objectives of this Order;

3. Assessment of the enforceability of existing state requirements, and the use of penalties for violations, and determining if changes are needed;

4. Development of a protocol for engagement with the Office of the Attorney General on enforcement efforts;

5. Assessment of any gaps in DCR resources or authorities necessary to address challenges identified under this review: and

6. The Director of the Department of Conservation and Recreation shall report to the Chief Resilience Officer within 180 days from issuance of this Order on the reviews required under this section.

D. Sea Level Rise Projection Guidance for Local Governments: The Chief Resilience Officer, with the assistance of the Special Assistant to the Governor for Coastal Adaptation and Protection, shall provide guidance to assist local governments with respect to regional or statewide sea level rise projections and work collaboratively to ensure these projections are useful for local decision-making. In developing this guidance, the Chief Resilience Officer shall consult with the following: localities, planning district commissions, impacted state and federal agencies, the Virginia Institute for Marine Science, and the Commonwealth Center for Recurrent Flooding Resiliency.

E. Freeboard Guidance for Local Governments: The Chief Resilience Officer, with the assistance of the Special Assistant to the Governor for Coastal Adaptation and Protection, shall provide guidance for local governments with respect to local options to ensure best practices in establishing freeboard standards based on regional or statewide data and assistance. In developing this recommendation, the Chief Resilience Officer shall consult with the following: localities with flood prone areas, planning district commissions, impacted state and federal agencies, and the Commonwealth Center for Recurrent Flooding Resiliency.

Section 3: Coordination and Objectives

A. Risk Communication: The Chief Resilience Officer, the Secretary of Public Safety and Homeland Security, and all relevant state agencies shall work to increase the Commonwealth's risk communication with regard to helping Virginia residents and local governments better understand their current and future risk from natural hazards.

B. Increased Coordination of Hazard Mitigation Programs and Initiatives: The Chief Resilience Officer, or his designee, shall convene regular cross-agency, cross-secretariat meetings to ensure all programs identified in the report mandated by Section 2, subtitle B, paragraph 2, of this Order are working in concert with one another, removing barriers to success and leveraging one another for maximum benefit.

C. Enhanced State and Military Collaborative Resilience: The Chief Resilience Officer, with the assistance of the Special Assistant to the Governor for Coastal Adaptation and Protection and the Secretary of Veterans and Defense Affairs, shall work with military installations, local governments, Department of Defense leaders, and other impacted stakeholders to identify and develop collaborative adaptation and mitigation opportunities in support of military and community readiness.

D. Increased Scale and Scope of Pre-Disaster Hazard Mitigation: To the maximum extent possible, state agencies, in coordination with the Chief Resilience Officer, or his designee, should use their planning, grant-making, and legal authorities to ensure natural hazard mitigation projects are conducted on a community-wide, rather than individual property scale. This approach will ensure greater protection for all Virginia residents, public and private property, and natural features and ecosystems that provide valuable barriers to flooding and other services.

E. Empower Localities to Reduce Risk: To the maximum extent possible, state agencies, in coordination with the Chief Resilience Officer, or his designee, should use their planning, grant-making, and legal authorities to empower local governments to plan and create more resilient communities. This may include: technical assistance and planning grants, sample zoning ordinances, assistance engaging federal programs like the National Flood Insurance Program and the Community Rating System, Federal Emergency Management Agency (FEMA) Hazard Mitigation grants, and others.

The Department of Housing and Community Development shall consult with relevant stakeholders and subject matter experts for the purpose of identifying and suggesting resilience-specific improvements to the Uniform Statewide Building Code (USBC) for inclusion in the 2018 code update.

F. Position the Commonwealth of Virginia to be a Leader in Resilience Technology: The Chief Resilience Officer, with the assistance of the Special Assistant to the Governor for Coastal Adaptation and Protection, shall work with the

Secretary of Commerce and Trade to ensure state, local, and regional efforts to test and implement resilience technologies are coupled with a coordinated effort to commercialize research and start and grow these businesses in the Commonwealth.

G. Empower Individuals to Reduce their Risk: To the maximum extent possible, state agencies should use their planning, grant-making, and legal authorities to empower Virginian residents to take individual actions to increase resilience of private property to natural hazards. This includes creating tools and places where property owners can review data related to their risk, teaching Virginians best management practices to reduce risk to existing structures and planning tools to limit risk to new structures and encouraging the purchase of flood insurance policies both inside and outside of the Special Flood Hazard Area. State agencies and departments shall help Virginian property owners identify and apply for state and federal pre-disaster mitigation grants.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 2nd day of November, 2018.

/s/ Ralph S. Northam
Governor

STATE AIR POLLUTION CONTROL BOARD

Public Hearing and Public Comment on the State Operating Permit

Purpose of notice: The Department of Environmental Quality (DEQ) is seeking comments and announcing a public hearing on three proposed permits to limit air pollution emitted by facilities in Northern Virginia. The Commonwealth intends to submit the permits as revisions to its state implementation plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Permit name: State Operating Permit, issued by DEQ under the authority of the State Air Pollution Control Board.

Affected facilities: 1) Covanta Alexandria/Arlington, 2) Covanta Fairfax, and 3) Dominion Possum Point.

Description of proposal: The proposed revision for each facility consists of a determination of reasonably available control technology (RACT) for the control of emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC), as applicable, in support of the 2008 ozone national ambient air quality standard (NAAQS).

Public comment period: November 6, 2018, to December 21, 2018.

Public hearing: Conference Room, Northern Regional Office, 13901 Crown Court, Woodbridge, VA at 10 a.m. on December 6, 2018.

How to comment: Written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ on the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All materials received are part of the public record.

To review proposal: The proposal and supporting documents will be available on the DEQ Air Public Notices for Plans website at http://www.deq.virginia.gov/Programs/Air/PublicNotices/airplansandprograms.aspx by November 6, 2018. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 1111 East Main Street, Richmond, VA, telephone (804) 698-4070 and

2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact Information: James LaFratta, Air Permit Manager, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3928, FAX (703) 583-3821, or email james.lafratta@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Air Pollution Control Board conducted a small business impact review of **9VAC5-80, Permits for Stationary Sources**, and determined that this regulation should be retained in its current form. The State Air Pollution Control Board is publishing its report of findings dated October 1, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

Part I and Article 6 of Part II of 9VAC5-80 were last reviewed in 2014. Articles 4 and 5 of Part II of the regulation were last reviewed in 2013. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Air Pollution Control Board conducted a small business impact review of **9VAC5-520, Biomass Energy Generator General Permit for a Pilot Test Facility**, and determined that this regulation should be retained in its current form. The State Air Pollution Control Board is publishing its report of findings dated October 2, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state

and federal requirements that protect air quality. No comments were received that indicate a need to repeal or revise this regulation. The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation became effective in 2011. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Air Pollution Control Board conducted a small business impact review of **9VAC5-530, Electric Generator Voluntary Demand Response General Permit**, and determined that this regulation should be retained in its current form. The State Air Pollution Control Board is publishing its report of findings dated October 2, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality. No comments were received that indicate a need to repeal or revise this regulation. The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost-effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation became effective in 2011. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Proposed Variances to Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services

Notice of action: The Department of Behavioral Health and Developmental Services (DBHDS), in accordance with Part VI, Variances (12VAC35-115-220), of the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115), hereafter referred to as the "Human Rights Regulations," is announcing an opportunity for public comment on the application for proposed variances to the Human Rights Regulations. The purpose of the regulations is to ensure and protect the legal and human rights of individuals receiving services in facilities or programs operated, licensed, or funded by DBHDS.

Each variance application references the specific part of 12VAC35-115-220 to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for a variance. Each application also describes time limits and other conditions for duration and the circumstances that will end the applicability of the variance. After considering all available information including comments, DBHDS intends to submit a written decision deferring, disapproving, modifying, or approving each variance renewal application. All variances shall be approved for a specific time period. The decision and reasons for variance will be published in the Virginia Register of Regulations.

Purpose of notice: DBHDS is seeking comment on the application for proposed new variances to the Human Rights Regulations for the DBHDS facility, Western State Hospital (WSH).

Variance to Procedures for Behavior Treatment Plans:

12VAC35-115-105 H: Providers shall not use seclusion in a behavioral treatment plan.

Variance to Procedures for Behavior Treatment Plans and Use of Seclusion, Restraint, and Time Out:

12VAC35-115-110 C 3: Only residential facilities for children that are licensed under the Regulations for Children's Residential Facilities (12VAC35-46) and inpatient hospitals may use seclusion and only in an emergency.

Explanation: The requested variances will allow WSH to place an individual in an environment of seclusion, at his request, and not as related to an emergency, in order to prevent self-injurious harm to the individual and to the staff members responsible for his care.

Variances to these regulations by WSH are reviewed by the State Human Rights Commission (SHRC) at least annually, with reports to the SHRC regarding the variances as requested.

Public comment period: November 26, 2018, through December 26, 2018.

Description of proposal: The proposed variance applications for renewal must comply with the general requirements of Part VI, Variances (12VAC35-115-220), of the Human Rights Regulations.

How to comment: DBHDS accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DBHDS by the last day of the comment period. All information received is part of the public record.

To review a proposal: Variance applications and any supporting documentation may be obtained by contacting the DBHDS representative named below.

Contact Information: Deborah Lochart, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, 1220 East Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0032, FAX (804) 804-371-2308, TDD (804) 371-8977, or email deb.lochart@dbhds.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

October 1, 2018

Administrative Letter 2018-05

To: All Insurers Licensed and Recognized in Virginia

Re: Assessment Practices and Procedures

Replacement of Administrative Letter 2015-11

The provisions of this administrative letter replace Administrative Letter 2015-11.

The State Corporation Commission Bureau of Insurance (Bureau) has developed a new online Company Assessment Filing Portal (Portal) for the electronic submission of your special assessment filings and payments. Effective January 1, 2019, you are required to submit your assessment filing electronically via the Portal. The submission and the payment is due annually on March 1. Please visit the Bureau's website at http://www.scc.virginia.gov/boi/co/assess/filing.aspx to access the Portal. There is an Assessable Premium Questionnaire and Worksheet which will assist you in completing your electronic filing submission.

Each insurer is responsible for consulting this online resource to file and pay their required assessments. In addition, the Bureau will no longer provide assessment forms to software companies. However, software companies will be provided the Assessable Premium Questionnaire and Worksheet to continue to provide assistance to insurers in the completion of their filings.

Electronic payments are permitted but not required. Checks submitted without a payment voucher cannot be processed by the bank and will be returned to the insurer for proper filing. Late payment and filing penalties plus interest will apply to all submissions and resubmissions made after the March 1 due date. If you do not have access to the internet, please call the Administrative Revenue Management Division at (804) 371-9333.

Questions regarding this letter may be directed to Keith D. Kelley, Administrative Revenue Management Division, Supervisor, State Corporation Commission, telephone (804) 371-9333, or email keith.kelley@scc.virginia.gov.

/s/ Scott A. White
Commissioner of Insurance

* * *

October 30, 2018

Administrative Letter 2018-07

TO: All Licensed Property and Casualty Insurers except Those Licensed Exclusively to Write Workers' Compensation, Licensed Rate Service Organizations and All Interested Parties

Re: Participating Insurers Allowed to either Adopt Rate Service Organization (RSO) Filings or Authorize an RSO to "File on Behalf Of"

The Bureau of Insurance (Bureau) announces that, effective immediately, participating insurers will be allowed the option to adopt materials filed by an RSO as an alternative to authorizing an RSO to file materials on their behalf. A participating insurer is defined as a member or subscriber of an RSO.

The option to adopt an RSO filing eliminates (i) the need to authorize an RSO to file materials on the insurer's behalf and (ii) the need for an insurer to physically file RSO materials as an alternative to authorizing the RSO to file on the insurer's behalf.

There is no change to the current filing requirements for RSOs. In other words, RSO filings can be submitted as either "filed on behalf of" or "advisory."

The Bureau has updated the SERFF General Instructions with information for insurers to use if they choose to use this adoption process for RSO filings. Insurers are permitted to adopt a particular RSO filing or to adopt an entire RSO program or product. The SERFF General Instructions also contain the requirements that insurers need regarding the "filed on behalf of" process. An attachment to this letter provides general guidance regarding these filings. However, since changes occur to filing requirements, the Bureau encourages all insurers to visit the SERFF General Instructions frequently to ensure that they are using the most current filing instructions and for announcements of changes in filing requirements.

Insurer Action for Adoption of RSO Filing:

To administer the adoption process, the Bureau has established procedures for an insurer to follow. For a participating insurer that has NOT authorized an RSO to file on its behalf, and wants to adopt a particular filing of forms, endorsements, rules, relativities and supplementary rating information that has been filed by the RSO and acknowledged, the following procedures apply.

IF:	THEN:
the insurer decides NOT to adopt an RSO's filing,	the insurer does NOT file anything with the Bureau.
the insurer decides to adopt an RSO's filing,	the insurer must notify the Bureau, in writing, of its intentions to adopt the RSO's filing and the effective date of the adoption. Notification to the Bureau must be prior to the effective date of the adoption.
the insurer must adopt more than one RSO filing to have a complete program,	the insurer is required to submit a list of the RSO filing reference numbers needed to represent the RSO's complete program OR the adoption may state that it applies to all reference filings "up to and including" a specific reference filing for the applicable RSO program/product. The insurer must provide an effective date for the adoption.
the insurer decides to adopt an RSO's filing with modifications.	the insurer must notify the Bureau, in writing, of its intentions to adopt the RSO's filing, the effective date of the adoption, AND submit the modifications for the Bureau's review. Acceptable modifications include, but are not limited to, exceptions to an RSO's filed rule or additional endorsements. Depending on the modifications, insurers should be mindful of the effective date to give adequate time to implement the filing once the modifications are approved.
the insurer decides to adopt only a portion of an RSO's filing.	the Bureau will only accept adoption requests of an RSO's entire filing. If an insurer decides to adopt only a portion of an RSO's filing, the insurer is required to physically file the portion instead of a request to adopt.

Insurer Action when RSO Files on Behalf of:

When a participating insurer has authorized an RSO to file on its behalf, and a new RSO filing has been filed and acknowledged by the Bureau, the following procedures apply.

IF:	THEN:
the insurer decides to use the materials and effective date as filed,	the insurer does NOT file anything with the Bureau.
the insurer decides to use the materials as filed BUT with a different effective date,	the insurer must notify the Bureau in writing of its effective date on or before the RSO's effective date.
the insurer decides not to use the materials,	the insurer must notify the Bureau on or before the RSO's effective date of its decision not to implement the RSO's filing.
the insurer decides to use the materials with modifications,	the insurer must notify the Bureau, in writing, of its intentions to adopt the RSO's filing, the effective date of the adoption, AND submit the modifications for the Bureau's review.

The following list of questions and answers provides guidance regarding adoption of an RSO's filing(s).

1. Will an insurer that is not a participating insurer of an RSO be allowed to adopt an RSO's Filing?

No.

2. Will RSOs still be allowed to "file on behalf of" their participating insurers?

Yes. It is important to note that no changes are being made to the "file on behalf of" process that RSOs currently utilize.

3. Can a participating insurer use the adoption process outlined in this administrative letter to adopt materials that were submitted by an RSO on a "file on behalf of" basis?

Yes.

4. What information is important for an RSO's participating insurer to know regarding the difference(s) between an RSO's "file on behalf of" authorization and the adoption process?

With regard to the adoption of an RSO's filing, the only way that a participating insurer can adopt a reference filing is for the insurer to take specific and necessary actions, which include (i) notifying the Bureau of the insurer's intention to adopt the reference filing, (ii) providing the RSO's reference filing number, and (iii) providing an implementation/effective date.

5. Will this change affect filing of an adoption of an RSO Advisory Filing?

No. Administrative Letter 2011-07 continues to apply to Advisory Filings.

6. Can the Advisory Filing Adoption Form (AFAF-1) provided in Administrative Letter 2011-07 be used to adopt a filing that has been submitted by the RSO as "filed on behalf of"?

No, insurers must use the instructions in this letter to "adopt" a filing that an RSO has submitted as "filed on behalf of."

7. Will this affect the filing of advisory loss costs by an RSO?

No. Administrative Letter 2010-05 (workers' compensation loss costs) and Administrative Letter 2006-16 (other than workers' compensation loss costs) apply to advisory loss costs.

8. Are participating insurers required to notify the Bureau if they intend to adopt subsequent revisions to an RSO Filing?

Yes. Participating insurers must notify the Bureau and provide a future implementation/effective date every time they decide to adopt an RSO's reference filing or any subsequent revisions of an RSO's reference filing.

Questions about this administrative letter should be directed to the Property and Casualty Division's Rates and Forms Sections at (804) 371-9965.

/s/ Scott A. White
Commissioner of Insurance

Attachment:

Information required when adopting an RSO program

The Bureau requires certain information from insurers that prefer to adopt a particular RSO's filing or an entire program

or product instead of authorizing the RSO to file on their behalf.

Instructions for adoption of one or more specific RSO filings for the same program or product:

• If a participating insurer wants to adopt one or more specific RSO filings for the same program or product, the following information is required:

○ RSO's name,

○ RSO filing number(s),

○ program/product name,

○ program/product description(s), and

○ insurer's effective/implementation date.

• If a participating insurer wants to adopt a complete program or product filed by an RSO, the following information is required:

○ RSO's name,

○ a list of all the RSO filing number(s) for the program/product,

○ program/product name,

○ program/product description(s), and

○ insurer's effective/implementation date.

OR

○ RSO's name

○ program/product name,

○ a statement that the adoption filing applies to all reference filings "up to and including" a specific reference filing for the program/product,

○ insurer's effective/implementation date.

* * *

November 1, 2018

Administrative Letter 2018-08

TO: All Carriers Licensed to Write Accident and Sickness Insurance in Virginia, All Health Services Plans and Health Maintenance Organizations Licensed in Virginia, and Interested Parties

RE: Requirements Applicable to Short-Term Limited-Duration (STLD) Insurance Coverage in Virginia

The purpose of this Administrative Letter is to provide guidance to carriers regarding the statutory and regulatory requirements that apply to STLD insurance coverage in Virginia in light of the recent issuance of a final federal rule pertaining to such plans by the U.S. Departments of Health and Human Services, Labor, and Treasury. The final federal rule, which took effect on October 2, 2018, amends the federal definition of STLD insurance coverage to allow such plans to cover an initial period of less than 12 months (i.e., up to 364 days), and to be renewed or extended for a maximum duration of no longer than 36 months in total. This final rule reverses prior federal rules that limited STLD insurance coverage to a maximum duration of three months.

Although STLD insurance coverage that is sold to individuals in the individual market is exempt from the Affordable Care Act's ("ACA") market reforms that are applicable to individual health insurance coverage (e.g., essential health benefit requirements and prohibitions on medical underwriting, preexisting condition exclusions and lifetime and annual limits), such coverage is subject to the requirements outlined in this Administrative Letter under the new final federal rule and under Virginia laws and regulations. Please note that the requirements contained in this Administrative Letter are not exhaustive and that other provisions of the Virginia Administrative Code and of Title 38.2 of the Code of Virginia ("Code") may apply.

The Bureau of Insurance ("Bureau") is currently developing form and rate review checklists to assist carriers as they prepare their STLD insurance product filings to comply with these federal and state requirements and to assist the Bureau in its review of such filings. Additionally, the Bureau has attached two charts to this Administrative Letter that delineate the key differences between traditional ACA health plans and STLD plans, as well as the key requirements pertaining to STLD insurance coverage in Virginia.

Form and Rate Filings

Forms associated with STLD insurance coverage that are issued in Virginia shall be filed with and approved by the Bureau pursuant to § 38.2-316 of the Code. Forms associated with STLD insurance coverage issued outside of Virginia to a group defined in § 38.2-3521.1 of the Code (e.g., to an association or trust) or pursuant to § 38.2-3522.1 of the Code (to a discretionary group), may not be offered to individuals in Virginia unless the carrier submits such forms to the Bureau and the Bureau acknowledges these forms as "Filed" prior to use.

Rates associated with individual STLD insurance coverage shall be filed with and approved by the Bureau in accordance with § 38.2-316.1 of the Code, including rates for coverage issued to individuals in Virginia through a non-employer group such as an association operating either inside or outside Virginia.

Regardless of whether forms or rates have been previously approved by the Bureau or filed with the Bureau for informational purposes, carriers must refile forms and rates associated with STLD insurance coverage to be issued in Virginia on or after January 1, 2019, - or to a Virginia resident, as applicable – and receive approval by the Bureau

(if applicable) pursuant to the guidance set forth herein prior to January 1, 2019.

Notices

All STLD insurance policies issued on or after October 2, 2018, must prominently display on the face of the policy and in any application materials in at least 14-point type one of the two notices set forth in 45 CFR § 144.103, depending on whether the coverage begins prior to January 1, 2019, or on or after January 1, 2019. Pursuant to the new final federal rule, carriers must ensure that forms issued on or after October 2, 2018, include such notice and have been filed with and approved by the Bureau, as applicable, prior to their issuance.

Additional Requirements[1]

General

STLD insurance policies shall be captioned as such (See § 38.2-305 A 2 of the Code).

Renewability and Preexisting Conditions Provisions

Pursuant to § 38.2-3514.2 of the Code, all STLD insurance coverage that: (i) exceeds six months in duration; or (ii) is not more than six months in duration but is medically underwritten, shall be renewable for a maximum duration of 36 months in total. Per § 38.2-3514.2 of the Code, only STLD insurance coverage that is six months or less in duration and not subject to medical underwriting can be nonrenewable.

STLD insurance coverage issued by a health carrier that: (i) exceeds six months in duration; (ii) is not more than six months in duration but is renewable; or (iii) is medically underwritten, shall comply with the requirements of § 38.2-3514.1 of the Code on preexisting conditions.

Covered Benefits

STLD insurance coverage issued by a health maintenance organization ("HMO") in the individual market shall cover basic health care services pursuant to § 38.2-4302 A 2 of the Code. In contrast, STLD insurance coverage issued to an individual by any carrier other than an HMO shall provide, at a minimum, major medical expense coverage (See 14 VAC 5-140-70 E).

STLD insurance coverage that: (i) exceeds six months in duration; or (ii) that is not more than six months in duration but renewable, shall comply with the mandated benefits requirements applicable to accident and sickness insurance policies (See Article 2 of Chapter 34 of Title 38.2 of the Code).

Internal Appeal and External Review

STLD insurance policies issued by a health carrier are subject to Virginia's internal appeal process requirements (See Chapter 35.1 of Title 38.2 of the Code and 14 VAC 5-216-10 et seq.). When used in conjunction with an MCHIP, the Bureau must approve this process (See § 38.2-5804 of the Code).

STLD insurance policies issued by a health carrier shall provide an external review process that complies with Virginia's external review requirements (See Chapter 35.1 of Title 38.2 of the Code and 14 VAC 5-216-10 et seq.).

Any questions concerning this Administrative Letter may be addressed to Elsie Andy, Bureau of Insurance Manager, Rates and Forms Section, Life and Health Division, Bureau of Insurance, telephone (804) 371-9072, or email elsie.andy@scc.virginia.gov.

/s/ Scott A. White
Commissioner of Insurance

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[1]Note that unless otherwise noted, these requirements apply to coverage forms that must be filed with and approved by the Bureau.

Key Differences between Traditional Major Medical (ACA) Health Plans and Short-term Limited-duration Plans

Provision/Attribute	ACA Plans	Short-term Plans
Guaranteed Issue	Must accept any individual who applies for coverage; issuance limited to open enrollment or special enrollment periods	Carriers can deny coverage or exclude certain health conditions based on an applicant's application; issued year-round
Guaranteed Renewable	Coverage is guaranteed renewable regardless of changes in health	Policies issued in-state with an initial term that exceeds 6 months or that is underwritten must be renewable up to 36 months; Policies issued in-state with a term of no more than 6 months and that is not underwritten may be either nonrenewable or renewable up to 36 months. Coverage issued to Virginians through an out-of-state association may

		be either nonrenewable or renewable up to a maximum of 36 months.
Preexisting Conditions	Cannot exclude coverage for a service related to a preexisting condition	Carriers can issue coverage with a health condition exclusion based on the applicant's application
Dollar Value Limits	Cannot impose daily, annual or lifetime dollar limits on essential health benefits	Carriers can limit the amount they pay on a daily, annual or lifetime basis
Essential Health Benefits	Must cover essential health benefits defined in the ACA	Policies issued in-state must provide a minimum amount of benefits; however, coverage may be issued to Virginians through an out-of-state association without a minimum benefit requirement
Restrictions relating to premium rates	Premiums may only vary based on geography, age, and tobacco use	Premiums may vary based on health status of applicant among other factors
Discrimination based on health status	Premiums may not be increased due to health conditions	Premiums may vary and coverage may not be issued or may be non-renewed based on health status

Virginia STLD Insurance Coverage Requirements		
	STLD Policy Issued in VA	Certificate issued to a VA resident through an out-of-state association
Policy Forms	Required to be filed and approved; must be in compliance with applicable state laws	Required to only be filed as long as extraterritoriality applies; not subject to most VA laws
Rates	Required to be filed and approved; must meet minimum loss ratio	Required to be filed and approved; must meet minimum loss ratio
If coverage is:		
Underwritten or > 6 months duration	Must be renewable up to 36 months; All mandated benefits apply (EHB does not apply)	May renew up to 36 months; No requirement to comply with VA mandated benefits
Not underwritten and 6 months or less duration	Some mandated benefits apply	No requirement to comply with VA mandated benefits

DEPARTMENT OF ENVIRONMENTAL QUALITY

Foxhound Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Halifax County

Foxhound Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Clover, pursuant to Virginia regulation. The project is located on the north and south sides of Green Valley Road and east of Mount Laurel Road in northeastern Halifax County (approximate coordinates are 36°52'26" N 78°4'45" W). The project will be sited within roughly 1,400 acres across multiple parcels, although the project footprint will be less than 600 acres. The solar array will connect up to 91 megawatts alternating current to Dominion Virginia Power's grid via a 230-kilovolt transmission line connecting to the Clover substation. The project will deploy approximately 270,000 photovoltaic solar panels on single axis trackers to follow the sun throughout the day.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality is conducting a periodic review and small business impact review of each of the regulations listed below. The review of each regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

9VAC15-40, Small Renewable Energy Projects (Wind) Permit by Rule

9VAC15-70, Small Renewable Energy Projects (Combustion) Permit by Rule

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins November 26, 2018, and ends December 17, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Medical Assistance Service is conducting a periodic review and small business impact review of each of the regulations listed below. The review of each regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

12VAC30-100, State Programs

12VAC30-121, Commonwealth Coordinated Care Program

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins November 26, 2018, and ends December 18, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Jimeequa Williams, Regulatory Coordinator, 600 East Broad Street, Suite 1300, Richmond, VA 23223, telephone (804) 225-3508, FAX (804) 786-1680, or email jimeequa.williams@dmas.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Notice of Intent to Amend the Virginia State Plan for Medical Assistance pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from Emily McClellan, Policy Planning and Innovation Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via email at emily.mcclellan@dmas.virginia.gov.

This notice is available for public review on the Virginia Regulatory Town Hall on the General Notices page at https://townhall.virginia.gov/L/generalnotice.cfm.

Reimbursement Changes Affecting the Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80): The state plan is being updated to include text describing the reimbursement methodology for EPSDT Behavioral Therapy Services.

There is no expected increase or decrease in aggregate annual expenditures.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

Notice of Intent to Amend the Virginia State Plan for Medical Assistance pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from Elizabeth Jones, Provider Reimbursement Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via email at beth.jones@dmas.virginia.gov.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Ms. Jones and such comments are available for review at the same address. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall public comment forum at https://townhall.virginia.gov/L/generalnotice.cfm.

Changes Affecting the Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80): The state plan is being revised to update the average commercial rate (ACR) calculation of supplemental payments for physicians affiliated with Eastern Virginia Medical School effective October 1, 2018. The updated ACR percentage of Medicare is 145%.

The expected increase in annual aggregate expenditures is $45,554 in state fiscal year 2019.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality is conducting a periodic review and small business impact review of each of the regulations listed below. The review of each regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

9VAC25-91, Facility and Aboveground Storage Tank (AST) Regulation

9VAC25-610, Groundwater Withdrawal Regulations

9VAC25-780, Local and Regional Water Supply Planning

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins November 26, 2018, and ends December 17, 2018.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Environmental Quality conducted a small business impact review of **9VAC25-600, Designated Groundwater Management Areas**, and determined that this regulation should be retained in its current form. The Department of Environmental Quality is publishing its report of findings dated October 1, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulation establishes groundwater management areas in the Commonwealth and continues to be needed. No public comments were received during the periodic review comment period. This regulation is a state-only regulation, and these standards do not overlap, duplicate, or conflict with federal or state law or regulation. This regulation was last amended in 2014. The groundwater management areas designated in this regulation continue to be beneficial.

Groundwater withdrawals that occur in designated groundwater management areas are subject to a companion regulation - Groundwater Withdrawal Regulations (9VAC25-610). Groundwater withdrawals that occur within designated groundwater management areas may be required to obtain a permit for the withdrawal and be subject to other requirements. These requirements are based on the amount of groundwater withdrawn. Small businesses may choose to limit the amount of groundwater they withdraw to avoid being regulated by the Groundwater Withdrawal Regulations (9VAC25-610) if they are located within a designated groundwater management area.

Contact Information: Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Proposed Consent Special Order for 234 Auto & Truck Salvage LLC and 234 Auto Salvage LLC

An enforcement action has been proposed for 234 Auto & Truck Salvage LLC and 234 Auto Salvage LLC for violations at the 234 Auto & Truck Salvage facility in Manassas, Virginia. The State Water Control Board proposes to issue a special order by consent to 234 Auto & Truck Salvage LLC and 234 Auto Salvage LLC to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Carla Pool will accept comments by email at carla.pool@deq.virginia.gov, FAX at (804) 698-4234, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from November 26, 2018, to December 26, 2018.

Proposed Consent Special Order for Earl Thompson Inc.

An enforcement action has been proposed for Earl Thompson Inc. for alleged violations that occurred at the Preston Park Subdivision at 3040 Sandy Hook Road, Sandy Hook, Virginia. The State Water Control Board proposes to issue a consent special order to Earl Thompson Inc. to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jeff Reynolds will accept comments by email at jefferson.reynolds@deq.virginia.gov or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from November 21, 2018, to December 26, 2018.

Proposed Consent Special Order for Hammersmith Partners LLC

An enforcement action has been proposed for Hammersmith Partners LLC for alleged violations that occurred at Summit Point Apartment Homes at 523 Summit Street, Petersburg, Virginia. The State Water Control Board proposes to issue a consent special order to Hammersmith to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jeff Reynolds will accept comments by email at jefferson.reynolds@deq.virginia.gov or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from November 21, 2018, to December 26, 2018.

Proposed Consent Order for Pilot Travel Centers LLC

An enforcement action has been proposed for Pilot Travel Centers LLC for violations of the State Water Control Law at Flying J #749, located in Caroline County, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the June 12, 2018, Flying J #749 diesel fuel discharge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Benjamin Holland will accept comments by email at benjamin.holland@deq.virginia.gov or by postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from November 27, 2018, through December 27, 2018.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE BOARD OF HEALTH

Title of Regulation: **12VAC5-450. Rules and Regulations Governing Campgrounds.**

Publication: 35:5 VA.R. 801-813 October 29, 2018

Correction to Final Regulation:

Page 813, 12VAC5-450-190 B:

subdivision 5, line one delete "5." insert "4."

subdivision 6, line one delete "6." insert "5."

subdivision 7, line one delete "7." insert "6."

VA.R. Doc. No. R16-4752; Filed November 9, 2018, 3:26 p.m.

BOARD OF PHARMACY

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

Publication: 34:25 VA.R. 2534-2537 August 6, 2018

Correction to Final Regulation:

Page 2537, 18VAC110-20-322 B, delete "B." and insert:

"~~F.~~ B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Research chemicals:

a. 2-(ethylamino)-2-phenyl-cyclohexanone (other name: deschloro-N-ethyl-ketamine), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 3,4-methylenedioxy-N-tert-butylcathinone, its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 4-fluoro-N-ethylamphetamine, its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

d. Beta-keto-4-bromo-2,5-dimethoxyphenethylamine (other name: bk-2C-B), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Synthetic opioids:

a. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-2butenamide (other name: Crotonyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. 2-(3,4-dichlorophenyl)-N-[2-(dimethylamino) cyclohexyl]-N-methylacetamide (other name: U-51754), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. N-phenyl-N-[4-phenyl-1-(2-phenylethyl)-4piperidinyl]-propanamide (other name: 4phenylfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until December 12, 2019, unless enacted into law in the Drug Control Act.

C."

VA.R. Doc. No. R18-5484; Filed November 14, 2018, 4:53 p.m.

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22VAC40-665. Child Care Program.**

Publication: 35:2 VA.R. 337-377 September 17, 2018

Correction to Final Regulation:

Page 351, 22VAC40-665-180, subdivision 2, first column, line after "equivalent offense outside the Commonwealth." delete "c." insert "d."

VA.R. Doc. No. R16-4602; Filed November 9, 2018, 2:48 p.m.