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).

January 2019 through December 2019

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
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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 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Agency Decision

Title of Regulation: **24VAC35-60. Ignition Interlock Program Regulations.**

Statutory Authority: § 18.2-270.2 of the Code of Virginia.

Name of Petitioner: Cynthia Hites.

Nature of Petitioner's Request: Petition to amend Virginia Administrative Code pursuant to § 2.2-4007.

"I, Cynthia Ellen Hites, as a citizen of the Commonwealth of Virginia, pursuant to Virginia Code § 2.2.-4007, do humbly submit this petition for the following amendment to Virginia Administrative Code 24VAC35-60-70, to have the VASAP Breath Alcohol Ignition Interlock Device (BAIID) required breath sample size reduced from 1.5 liters to 1.0 liter. Due to generally smaller lung capacity compared to men, it has been shown women have 16 times the failed breath sample attempts (aborts) when using the BAIID".[(1)] Failed breath sample attempts can be caused by "not providing enough air or providing too much air, humming at the incorrect tone or volume, breaks in the hum, or too much humidity or saliva in the breath sample." This means women have 16 times the interaction with the machine upon startup, and, during rolling retests while on Virginia's roadways. I personally struggled mightily with the basic functionality of the device and experienced hyperventilation on numerous occasions due to sequential invalid samples during use of the ignition interlock device. Incidentally, an overlooked cause of the exponentially higher number of breath sample aborts for women, is simply tone of voice. The BAIID anti-circumvention feature requires the driver provide sufficient reverberation for the device's handset to detect human presence. Of course, women naturally tend to have higher pitched voices that produce less reverb, and can, and do, force a difficult and uncomfortable alteration in vocal method to achieve a passing breath sample. Paramount in my opinion, however, is the fact the maneuver required for the BAIID breath sample involves not tidal breath, but execution of the vital capacity maneuver to obtain the breath sample. The vital capacity maneuver obtains the greatest volume of air that can be expelled from the lungs after taking the deepest possible breath. Even then, the subject is required to actually force breath out of the lungs into the BAIID far beyond what's natural, and in my case, experience disorientation via hypoxia and actual physical lung pain frequently. "In order to fulfill the minimum 1.5 liter volume requirement...the sixty year old woman must exhale at least 60% of her vital capacity. Whereas the twenty year old man would only have to exhale about 25% of his vital capacity. At the same blood alcohol concentration (BAC), the smaller lung volume would yield a greater breath alcohol reading."[(2)] So, in addition to being 16 times more difficult for women to simply achieve to a valid breath sample, the requirement alone can skew the test results to reflect an erroneously high BAC. To mitigate these existing human factors that inherently punish women, and others with similar known, or unknown conditions, to a greater degree; and to initiate a decrease in the potential for vehicle collision due to distracted driving, lowering the breath sample requirement to 1.0 liter will be a step closer to closing the disparity gap of punishment between sexes, and detrimental judicial imbalance currently existing due simply to physiological differences among offenders. States the statute 24VAC-35-60-70 F, 4: "The ignition interlock device shall indicate when a 1.5 L breath sample has been collected and shall indicate this by audible or visual means. The commission may authorize service providers to adjust the breath volume requirement to as low as 1.0 L upon receipt of documentation from a licensed physician verifying the existence of an applicable medical condition. The physician's documentation shall be submitted in a format approved by the commission." The one-liter volume breath sample requirement is legally permissible, and I implore the commission to take under advisement this petition to permanently lower the requirement, in order to strengthen the integrity of the program, so as to not unwittingly punish women, and incidentally; asthmatics, COPD sufferers, congestive heart failure survivors, and undiagnosed pulmonary patients to a greater degree. Please, dear Commissioners, weigh this petition and begin to create a more judiciously solid system. Humbly Yours, Cynthia E. Hites"

[(1)]An Evaluation of Drivers Using an Ignition Interlock Device: Breath Tests While Driving. By Ben D. Sawyer and P. A. Hancock

[(2)]Breathing Related Limitations to the Alcohol Breath Test. By Dr. Michael P. Hlastala, Ph.D.

Agency Decision: Request denied.

Statement of Reason for Decision: On October 26, 2018, during its quarterly meeting, the Commission on VASAP considered and unanimously denied the petitioner's request on the following grounds: The National Highway Traffic Safety Administration (NHTSA) publishes model specifications for the use of ignition interlocks. These specifications state, "If a state wishes to set its minimum breath sampling size at 1.5 liters, and permit a 1.2 liter level upon medical recommendation, the model specifications will be able to support that decision." Consistent with the NHTSA specifications, Virginia already has a process in place in which any ignition interlock user, male or female, may have the breath volume requirement lowered upon presentation of documentation from a physician explaining the medical necessity to do so. In all cases in which this process is properly followed, VASAP will lower the breath volume in

keeping with the physician's recommendation. The commission chair advised the petitioner in person of this decision at the October 26, 2018, meeting.

Agency Contact: Richard Foy, Field Service Specialist, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, or email rfoy@vasap.virginia.gov.

VA.R. Doc. No. R18-32; Filed November 20, 2018, 11:10 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board of Medical Assistance Services has WITHDRAWN the Notice of Intended Regulatory Action for **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care Services**, and **12VAC30-60, Standards Established and Methods Used to Assure High Quality Care,** which was published in 35:5 VA.R. 606 October 29, 2018. This action will be withdrawn, and instead regulations will be promulgated related to behavioral health transformation. The Department of Medical Assistance Services will be working with stakeholders and partner agencies to develop the behavioral health transformation regulations.

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

VA.R. Doc. No. R19-5686; Filed November 29, 2018, 12:00 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-50, Regulations Governing Wholesale Distributors, Manufacturers, and Warehousers**. The purpose of the proposed action is to promulgate regulations in accordance with provisions of § 54.1-3415.1 of the Code of Virginia as enacted by Chapters 241 and 242 of the 2018 Acts of Assembly. A new section, 18VAC110-50-55, sets out the requirements for delivery of Schedule VI devices directly to an ultimate user or consumer on behalf of a medical equipment supplier upon a valid order from a prescriber or upon request from the medical director of a home health agency, nursing home, assisted living facility, or hospice to facilitate provision of Schedule VI devices more economically and efficiently without a party in the middle of the transaction having to physically possess and store the devices.

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

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

Public Comment Deadline: February 6, 2019.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R19-5526; Filed December 12, 2018, 2:27 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-411, General Relief Program**. The purpose of the proposed action is to clarify and enhance the regulation. The General Relief Program provides assistance to certain children who are not eligible for other forms of assistance and is an optional program at the local level. More specifically, the program provides assistance to children who are not related to the adult with whom they reside, do not qualify for Temporary Assistance for Needy Families, and are not in foster care. The regulation for the program provides minimal information regarding how income and resources are determined and the process of determining eligibility. The goal of the proposed action is to amend the regulation by adding details regarding the eligibility determination process, the amount of assistance provided, and timeframes for which assistance can be provided. Other changes may be necessary, based on public comments received.

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

This Notice of Intended Regulatory Action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

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

Public Comment Deadline: January 23, 2019.

Agency Contact: Monique Majeus, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7459, FAX (804) 726-7357, or email monique.majeus@dss.virginia.gov.

VA.R. Doc. No. R19-5380; Filed November 26, 2018, 10:59 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Fast-Track Regulation

Title of Regulation: **2VAC5-141. Health Requirements Governing the Admission of Agricultural Animals, Companion Animals, and Other Animals or Birds into Virginia (amending 2VAC5-141-10, 2VAC5-141-40 through 2VAC5-141-130; adding 2VAC5-141-35; repealing 2VAC5-141-20, 2VAC5-141-30).**

Statutory Authority: §§ 3.2-5902 and 3.2-6002 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 23, 2019.

Effective Date: February 7, 2019.

Agency Contact: Dr. Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, TTY (800) 828-1120, or email carolynn.bissett@vdacs.virginia.gov.

Basis: Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board. Section 3.2-5902 of the Code of Virginia authorizes the board to adopt regulations as may be necessary to establish the health of certain pet animals imported into Virginia. Section 3.2-6001 of the Code of Virginia authorizes the board to adopt regulations in coordination with other states and the U.S. Department of Agriculture to protect the livestock and poultry of Virginia. Section 3.2-6002 of the Code of Virginia authorizes the board to adopt regulations as may be necessary to prevent the spread of and eradicate infectious or contagious diseases in livestock and poultry in Virginia.

Purpose: The current regulations concerning the importation of animals into Virginia need minor revisions to align them with the current priorities and methodology of state, federal, and international animal disease and marketing programs. The proposed amendments will also align Virginia's regulation with the current federal animal movement requirements as well as those of other states, ensuring that Virginia animal producers and owners are not placed at a disadvantage in interstate and international trade and protecting the continued viability of Virginia's animal industries, thereby protecting the economic welfare of the industries. As Virginia is a net exporter of agricultural animals, these entry requirements are designed to minimize the risk of disease introduction, allow rapid response and control should such introduction occur, and promote unimpeded commerce.

Rationale for Using Fast-Track Rulemaking Process: The proposed amendments are noncontroversial changes that are the consensus of many stakeholder organizations. These changes have been discussed with and are supported by the leaders of Virginia's animal agriculture industries.

Substance: The majority of the amendments to this regulation are technical, grammatical, and formatting, such as changing "less than" to "younger than" and capitalizing "Certificate of Veterinary Inspection." 2VAC5-141-20 and 2VAC5-141-30 have been combined and moved to streamline the regulation and address concerns from users of the regulation.

"Companion animal" has been replaced throughout the regulation with "pet animal" to align with § 3.2-5902 of the Code of Virginia, which requires that "pet animals" imported into Virginia enter with a Certificate of Veterinary Inspection. The animals affected and the requirements have not changed.

Substantive changes include the requirement for a permit for animals imported into Virginia to allow the capturing of electronic movement and identification data, the authority for the State Veterinarian to waive requirements for animals fleeing disaster-affected regions, the elimination of the need for poultry importers to apply for a poultry approval number; the requirement for trichomoniasis testing for imported bulls of a certain age, and the requirement that a horse that either originated in or has passed through a region where contagious equine metritis is known to exist and that is issued a permit to enter Virginia shall be permanently identified with an affixed or implanted device bearing a unique identification number.

Issues: The primary advantages of the proposed revisions are the potential for increased compliance with the regulation by simplifying it and the focus on areas that are most effective in mitigating animal disease introduction and resultant losses. Thus, both the public and the agency benefit from the proposed changes. The new permit and bull testing requirements are the responsibility of out-of-state importers of animals into Virginia and should not directly affect Virginia citizens. Bull testing and equine microchip costs are less than $50, and any percentage of that cost that may be passed down to Virginia industry partners by out-of-state shippers is considerably less than the cost of disease

treatment or the potential significant economic impact on the agricultural industry from disease introduction. There are no disadvantages to the public or the Commonwealth as a result of the proposed amendments.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to: 1) replace the current paper based import permit process with an online system, 2) eliminate the need to obtain a poultry approval number, 3) require trichomoniasis testing for all bulls of a certain age prior to importation into Virginia, and 4) require implants for horses coming from or through areas where contagious equine metritis is known to exist.

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

Estimated Economic Impact. This regulation establishes requirements for importation of animals into Virginia from other states or countries. One of the proposed substantive changes is replacing the paper based import permit process with an online system. Currently, the veterinarian in the originating state or country must generate a written Certificate of Veterinary Inspection and mail a copy to the Virginia State Veterinarian prior to entry into Virginia. When the Virginia State Veterinarian receives the copy, the information on the permit is manually entered into a computer system. Under the proposed regulation, the veterinarian in the originating location will enter the information online and will be able to print the Certificate of Veterinary Inspection from that entry. There is already an established online system, and 25% of the importers already voluntarily use the online system. The benefits of the online system include instant access to information on what is being imported into Virginia and a more efficient way of managing imports. Approximately 30,000 such certificates are received each year.

The Board also proposes to eliminate the need for a "poultry approval number." Currently, prior to importing poultry into Virginia the importer must call the Virginia State Veterinarian and obtain a poultry approval number, which currently serves no useful purpose. Each year approximately 10,000 such numbers are issued. The proposed change will eliminate the need to make a call to the Virginia State Veterinarian.

Moreover, the proposed changes include requiring trichomoniasis testing for all bulls of a certain age prior to importation into Virginia. Trichomoniasis is a sexually transmitted disease that has adverse reproductive effects such as abortions and lower fertility. The test costs approximately $50 per animal, which according to the Department of Agriculture and Consumer Services (DACS), is considerably less than the cost of disease treatment or the potential adverse economic impact on the agricultural industry from disease introduction. There were 268 such bulls imported into Virginia in 2017. According to DACS, other states have passed similar testing requirements for this disease. Thus, the required testing will help prevent Virginia being a dumping ground for infected bulls.

Finally, the Board proposes to require that a horse that either originated in or has passed through a region where contagious equine metritis is known to exist, and that is issued a permit to enter Virginia, be permanently identified with an affixed or implanted device bearing a unique identification number. Equine metritis is also a sexually transmitted disease that has adverse reproductive effects. It is generally found in Europe. The purpose of the implant is for identification. For example, a show horse coming back from Europe has to be quarantined for 48 hours in New York and 21 days to 6 weeks in Virginia. An implant would help ensure that the horse at the end of the quarantine period is the same horse that entered the quarantine. The cost of the implant is less than $50. Similarly, this amount is much lower than the potential treatment costs or adverse economic effects from the introduction of this disease. Approximately 60 horses per year are expected to be subject to this rule, of which 90% would already have such an identification device implanted.

Businesses and Entities Affected. According to the 2012 census conducted by the United States Department of Agriculture, there are approximately 4,042 poultry and egg farms, 20,091 beef cattle farms, 737 dairy cattle farms, 919 swine farms, 2,626 horse farms, 2,870 sheep and goat farms, and 1,391 farms that house other animals in Virginia. However, not all such farms import animals. The majority of these businesses would be considered small.

Localities Particularly Affected. The proposed changes do not particularly affect any locality.

Projected Impact on Employment. The impact on total employment is uncertain. The proposed electronic permit and elimination of the need for a poultry approval number should reduce demand for labor by a small amount. Conversely, the proposed testing and implant requirements for certain animals would increase demand for labor by a small margin.

Effects on the Use and Value of Private Property. To the extent the value of reduced disease risks to Virginia livestock outweigh the cost of testing and implant requirements, a positive effect on the use and value of private property should be 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. The majority of the affected businesses would be considered small. The costs and other effects on them are the same as discussed above.

Alternative Method that Minimizes Adverse Impact. There is no known alternative method that minimizes the adverse impact on small businesses while accomplishing the same goals.

Adverse Impacts:

Businesses. The proposals to require trichomoniasis testing for all bulls of a certain age prior to importation into Virginia and to require implants for horses coming from or through areas where contagious equine metritis is known to exist would moderately increase costs for businesses involved in transporting such animals into Virginia.

Localities. The proposed regulation does not adversely affect localities.

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

Agency's Response to Economic Impact Analysis: The agency concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments clarify, simplify, and increase the ability of animal importers to comply with regulation. Changes include (i) updating terms and definitions, including changing all references from "companion animals" to "pet animals" to better align with the language used in § 3.2-5902 of the Code of Virginia; (ii) requiring that individuals importing animals into Virginia obtain a permit, which may be denied if all requirements, including those for official identification and certain disease testing, are not met; (iii) amending the definition for "permit" to enable the use of electronic permits going forward; (iv) granting the State Veterinarian the authority to waive import requirements for animals from disaster-affected areas; (v) clarifying the import requirements for poultry and eliminating the need for a "poultry approval number"; (vi) requiring trichomoniasis testing for all bulls of a certain age prior to importation into Virginia; and (vii) requiring that a horse that either originated in or has passed through a region where contagious equine metritis is known to exist and that is issued a permit to enter Virginia be permanently identified with an affixed or implanted device bearing a unique identification number.

CHAPTER 141
HEALTH REQUIREMENTS GOVERNING THE ADMISSION OF AGRICULTURAL ANIMALS, ~~COMPANION~~ PET ANIMALS, AND OTHER ANIMALS OR BIRDS INTO VIRGINIA

2VAC5-141-10. Definitions.

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

"Agricultural animals" means livestock and poultry.

~~"Avian" means all domestic and wild members of the class Aves.~~

~~"Cats"~~ "Cat" means all domestic and wild members of the family Felidae.

"Cattle" means all domestic and wild members of the genera Bos, Bison, and Bubalus to include domestic cattle, yak, bison, and water buffalo.

"Certificate of ~~veterinary inspection~~ Veterinary Inspection" means an official document, which may be in an electronic format, ~~issued by a federal, state, tribal, or accredited veterinarian~~ certifying the inspection of ~~animals~~ an animal and completed and signed by (i) an accredited veterinarian who is approved by the animal health official of the animal's state of origin, (ii) a veterinarian in the employ of the animal's state of origin, or (iii) a veterinarian in the employ of the Veterinary Services Division, Animal and Plant Health Inspection Service, U.S. Department of Agriculture.

~~"Companion animal" means any vertebrate animal excluding ornamental fish not otherwise defined herein as avian, cattle, goat, horse, other ruminant, sheep, swine, or primate.~~

"Dairy type" means all cattle of, or primarily of, a dairy or dual-purpose breed ~~of cattle including but not limited~~ to include cattle of the Ayrshire, Brown Swiss, Guernsey, Holstein, Jersey, Milking Shorthorn, or similar breeds to include castrated males of such breeds.

~~"Dairying purposes" means the production of milk or milk products, or the production of breeding stock whose progeny are to be used for the production of milk, milk products, or breeding stock.~~

~~"Dogs"~~ "Dog" means all domestic and wild members of the family Canidae.

"Free roaming swine" means swine that are not contained within an enclosure by their owner or custodian.

"Goat" means all domestic and wild members of the genus Capra.

"Hatching eggs" means all poultry eggs that are intended to be hatched.

"Horse" means all domestic and wild members of the family Equidae to include~~, but not be limited to,~~ horses, asses, zebras, and any hybrids of horses, asses, or zebras.

"Livestock" means all cattle, sheep, swine, goats, horses, donkeys, mules, camels, llamas, and alpacas.

"Marketing facility" means a livestock market; stockyard; buying station; auction, consignment, or other sale venue; or other premises including those operating video, web-based, telephone, or other types of electronic sales methods, where livestock from multiple owners are comingled and assembled for sale or exchange in Virginia.

"NPIP" means the National Poultry Improvement Plan.

"Official identification" means a unique identification number issued by a state or federal program or other forms of identification approved by the State Veterinarian.

"Other ~~ruminants"~~ ruminant" means all members of the order Artiodactyla not otherwise defined ~~herein~~ in this section as cattle, goats, sheep, or swine to include camelidae and cervidae.

"Permit" means ~~an official document issued for and prior to the interstate shipment~~ permission granted by and in a format approved by the State Veterinarian that authorizes the import of certain classes of livestock, poultry, ~~companion animals~~ pet animals, primates, and other animals or birds into Virginia. ~~This permit is issued at the discretion of the State Veterinarian.~~

"Pet animal" means a dog, cat, nonpoultry bird species, or any other animal, ferae naturae, wild or tame under domestication or in custody that is not intended for commercial use or that by its nature is fit for use only as a pet.

"Poultry" means all domestic fowl, ratites, and game birds raised in captivity to include~~, but not be limited to,~~ chickens, turkeys, ducks, geese, ~~ratites, and game birds such as~~ quail, or partridge.

"Primate" means all nonhuman members of the order Primates.

"Region" means any premises~~;~~, political subdivision of a state~~,~~ or country~~;~~, or other defined geographic area.

"Sheep" means all domestic and wild members of the genus Ovis.

"Slaughter establishment" means a livestock slaughter facility that is under inspection by the USDA or the Virginia Department of Agriculture and Consumer Services.

"State Veterinarian" means the State Veterinarian of the Commonwealth of Virginia or his designee.

"Swine" means all domestic and wild members of the family Suidae.

"USDA" means the ~~United States~~ U.S. Department of Agriculture.

2VAC5-141-20. ~~Certificates of veterinary inspection.~~ (Repealed.)

~~A. No agricultural animals, companion animals, or any other animals or birds of any species that are affected with or that have been exposed to any infectious or contagious disease shall be imported into Virginia except by special written permit of the State Veterinarian.~~

~~B. All agricultural animals, companion animals, or any other animals or birds of any species imported into Virginia, except as otherwise exempted by this chapter, shall be accompanied by a certificate of veterinary inspection or alternative movement documentation approved by the State Veterinarian that shall be attached to the bill of lading or shall be in the possession of the person in charge of such animals or birds, and a copy of such certificate shall be forwarded promptly to the State Veterinarian.~~

~~C. A certificate of veterinary inspection shall be a written record meeting the requirements of Virginia and executed on an approved form of the state of origin. It shall contain the names and street addresses or premise identification numbers of the consignor and consignee and premises of origin and destination if different. It shall indicate the health status of the animals or birds and include the dates and results of all required tests.~~

~~D. After physical examination of the animal and completion of all required tests, the certificate of veterinary inspection shall be issued within 30 days before the date of entry for cattle, goats, horses, other ruminants, poultry, sheep, and swine.~~

~~E. After physical examination of the animal and completion of all required tests, the certificate of veterinary inspection shall be issued within 10 days before the date of entry for avian species not considered poultry, companion animals, and primates.~~

~~F. The certificate shall be issued by an accredited veterinarian approved by the animal health official of the state of origin; a veterinarian in the employ of the state of origin; or a veterinarian in the employ of the Veterinary Services Division, Animal and Plant Health Inspection Services, United States Department of Agriculture.~~

~~G. All testing required by this chapter shall be considered official if conducted by a state, federal, tribal, or accredited veterinarian or collected by a state, federal, tribal, or accredited veterinarian and conducted by an official animal health laboratory approved by a state or federal animal health agency as dictated by testing protocol.~~

2VAC5-141-30. ~~Animal identification.~~ (Repealed.)

~~A. All shipments of poultry and hatching eggs entering Virginia must be accompanied by an approval number issued by the State Veterinarian.~~

~~B. Official identification for cattle can be:~~

~~1. Ear tag or other permanently affixed device bearing a unique identification number issued by an official state or federal program;~~

~~2. USDA back tag only for cattle consigned directly to slaughter; or~~

~~3. Other forms of identification approved by the State Veterinarian.~~

~~C. Official identification for goats and sheep can be:~~

~~1. Official ear tags that are approved by the USDA for use in the Scrapie Eradication Program or the Scrapie Flock Certification Program;~~

~~2. For goats exempt from identification required by the Scrapie Eradication Program, an ear tag or other affixed device bearing a unique identification number issued by an official state or federal program, or a USDA back tag only for such goats consigned directly to slaughter;~~

~~3. For goats, a legible official registry tattoo if accompanied by a registration certificate; and~~

~~4. Other forms of identification approved by the State Veterinarian.~~

~~D. Official identification for horses can be:~~

~~1. A thorough written or photographic record of the horse's appearance directly noted on or affixed to the certificate of veterinary inspection and endorsed by the issuing veterinarian;~~

~~2. Legible breed association tattoo number;~~

~~3. Affixed or implanted device bearing a unique identification number issued by a state or federal program, or a breed or performance association that allows the State Veterinarian access to records; and~~

~~4. Other forms of identification considered official by the USDA or the State Veterinarian.~~

~~E. Official identification for swine can be:~~

~~1. Ear tag or tattoo recorded by a purebred registry;~~

~~2. Ear tag or other affixed device bearing a unique individual or group identification number issued by an official state or federal program;~~

~~3. Official premise identification tattoo including state of origin; and~~

~~4. Other forms of identification considered official by the USDA or the State Veterinarian.~~

2VAC5-141-35. Permit and Certificate of Veterinary Inspection.

A. No person shall import into Virginia an agricultural animal, pet animal, primate, or other animal or bird of any species without obtaining a permit, unless exempted by the State Veterinarian.

B. All agricultural animals, pet animals, primates, and any other animal or bird of any species shall be accompanied by a Certificate of Veterinary Inspection when imported into Virginia, unless exempted pursuant to this chapter.

2VAC5-141-40. ~~Entry by permit only and import~~ Import restrictions; exemptions.

A. No person shall import into Virginia an agricultural animal, pet animal, primate, or any other animal or bird of any species that is affected with or that has been exposed to any reportable infectious or contagious disease except by permit issued at the State Veterinarian's discretion.

B. When the State Veterinarian is informed of any unusual or serious outbreak of disease among livestock or poultry in any other region that, in his opinion, constitutes a threat to livestock and poultry in Virginia, he shall by proclamation prohibit the entrance of any livestock or poultry that originate either directly or indirectly from that region at his discretion, except by permit. He may also prohibit the entrance of any products as defined in the meat or poultry inspection regulations of the USDA, in the Virginia Meat and Poultry Products Inspection Act, or in any other applicable or related Virginia statutes and regulations, except by permit. Specific classes of animals as listed in this chapter also require a permit for entry into Virginia.

~~B.~~ C. Agricultural animals, ~~companion~~ pet animals, primates, or any other animals or birds of any species imported into Virginia for bona fide scientific research by a recognized agricultural institution or institution licensed by the USDA, and for which compliance with the requirements of this chapter would be a detriment to the research, may be excused from the requirements at the discretion of the State Veterinarian by the issuance of a permit.

~~C. No person shall transport through or import into Virginia any livestock from a point of origin located within a 10-mile radius of any place in which the disease vesicular stomatitis has been found to exist during the 30-day period prior to the entry of said animal into Virginia.~~

~~D. No person shall transport through or import into Virginia any livestock originating in a state in which the disease vesicular stomatitis has been found to exist during the 30-day period prior to the entry of said animal into Virginia unless the animal has been examined and found to be free from vesicular stomatitis and is accompanied by a certificate of~~

~~veterinary inspection, a copy of which has been mailed to the State Veterinarian, bearing the following or similar statement from the issuing state, federal, tribal, or accredited veterinarian: "All animals identified on this health certificate have been examined and found to be free from vesicular stomatitis and, to the best of my knowledge and belief, during the past 30 days these animals have neither been exposed to said disease nor held at a location within 10 miles of any place in which said disease has been found to exist."~~

~~E. All requests for permits must be directed to the State Veterinarian in writing and must give all information as he may require.~~

D. The State Veterinarian may waive specific requirements for the importation of an animal from a disaster-affected area into Virginia. A waiver issued pursuant to this subsection shall be issued in writing.

E. Any livestock entering Virginia from a region in which vesicular stomatitis has been diagnosed within the 14 days prior to the livestock's entry into Virginia or from a region in which a premises quarantined for vesicular stomatitis is located shall be accompanied by a Certificate of Veterinary Inspection dated within the 14 days prior to the livestock's entry into Virginia. The Certificate of Veterinary Inspection shall include the following statement: "All animals identified on this Certificate of Veterinary Inspection have been inspected and found to be free from clinical signs of vesicular stomatitis."

2VAC5-141-50. Common carriers; trucks.

A. Owners and operators of common carriers, trucks, or other conveyances are forbidden to move any agricultural animals, ~~companion~~ pet animals, primates, or any other animals or birds of any species into Virginia except in compliance with the provisions set forth in this chapter.

B. All railway cars, trucks, and other conveyances used for transportation of livestock or poultry must be kept in a sanitary condition. The State Veterinarian may require the cleaning and disinfecting of any conveyance at any time to prevent the spread of infectious or contagious diseases.

2VAC5-141-60. ~~Avian~~ Poultry entry requirements; exemptions.

~~A. All birds in commerce not classified as poultry must be accompanied by a certificate of veterinary inspection issued within 10 days prior to entry into Virginia. Any poultry in commerce that by its nature is fit only as a pet must be accompanied by a certificate of veterinary inspection issued within 10 days prior to entry into Virginia.~~

~~B. For all other poultry, excepting poultry for immediate slaughter and going directly to a slaughter establishment, approval numbers are required for shipments of poultry and hatching eggs.~~

~~1. Each shipper of poultry or hatching eggs shall first secure an approval number from the State Veterinarian. This approval number must appear on each shipment of poultry or hatching eggs shipped into Virginia.~~

~~2. Applications for approval numbers must be made on forms provided by the State Veterinarian. Each application shall require the following information on each premises from which the poultry or hatching eggs originate:~~

~~a. The name and address of each premises owner;~~

~~b. The species and the number of birds for each on each premise, or for hatcheries hatching capacity;~~

~~c. For chickens and turkeys, and the parent flock of the hatching eggs of chickens and turkeys, the date of the most recent Pullorum-typhoid test, the total number or the percentage of positive reactions to said test, and the Pullorum-typhoid status attained; and~~

~~d. Any additional information the State Veterinarian may require.~~

~~3. Applications, when completed, must be forwarded to the official state agency, the state livestock health official, or other competent and recognized authority of the state of origin for verification, approval, and signature and then forwarded to the State Veterinarian for final approval.~~

~~4. Poultry and hatching eggs shall not be shipped into Virginia until final approval has been granted and the approval number is received.~~

A. Within the 30 days prior to its date of entry into Virginia, poultry must be deemed healthy and free of infectious diseases and all required tests must be completed. Proof of examination and test results must be submitted with the permit request and on a Certificate of Veterinary Inspection; VS 9-3, if the shipper is a NPIP participant; or in a format approved by the State Veterinarian. All poultry shall be accompanied by an electronic or written Certificate of Veterinary Inspection, VS 9-3, or alternative movement document approved by the State Veterinarian, which shall be in the possession of the person in charge of such poultry.

~~C.~~ B. Chickens, turkeys, and hatching eggs of chickens and turkeys shall not be imported into Virginia unless originating exclusively from flocks or hatcheries participating in the ~~National Poultry Improvement Plan (NPIP)~~ NPIP or issued a permit and found to be negative ~~to~~ on a Pullorum-typhoid test within 30 days prior to entry.

~~D.~~ C. Poultry shall not be imported into Virginia unless the following conditions are met concerning avian influenza (H5 and H7):

1. Requirements governing hatching eggs and certain day-old birds:

a. Hatching eggs shall originate from a breeder flock that participates in and meets the requirements of the "U.S. Avian Influenza Clean" program for chickens or the "U.S. H5/H7 Avian Influenza Clean" program for turkeys of the ~~National Poultry Improvement Plan~~ NPIP.

b. Day-old chickens, day-old game birds, and day-old turkeys shall originate from a hatchery that only handles hatching eggs that originate from breeding flocks that participate in and meet the requirements of the "U.S. Avian Influenza Clean" or the "U.S. H5/H7 Avian Influenza Clean" programs of the ~~National Poultry Improvement Plan~~ NPIP.

c. A statement certifying that the breeder flock shipping hatching eggs and all breeder flocks supplying eggs to the hatchery shipping day-old chickens, day-old game birds, or day-old turkeys participates in and meets the requirements of the "U.S. Avian Influenza Clean" or the "U.S. H5/H7 Avian Influenza Clean" programs of the ~~National Poultry Improvement Plan~~ NPIP shall be provided.

2. Requirements governing all other poultry:

a. The poultry ~~is~~ shall be tested and found negative for avian influenza (H5 and H7) within 14 days prior to entry into Virginia or ~~comes~~ shall come from a flock that has first been tested with negative results within 14 days prior to entry ~~in~~ into Virginia as follows:

(1) Breeding chickens and turkeys: 20 birds per house minimum, or for flocks of 500 or fewer, 20 birds minimum as long as all houses and pens on the premises are represented.

(2) ~~Grow-out~~ Grow-out turkeys for immediate slaughter at a slaughter establishment: 10 birds per house minimum for multi-stage farms and 10 birds per farm, with at least five birds per house, on single-stage farms.

(3) Broiler chickens less than or equal to 70 days of age for immediate slaughter at a slaughter establishment: 11 birds per premises with at least one per house.

b. The results of the tests for avian influenza are recorded and signed by an accredited veterinarian in the state of origin or are recorded on a report issued by a laboratory approved by any state or federal animal authority. Only agar gel immunodiffusion (AGID), enzyme-linked immunosorbent assay (ELISA), polymerase chain reaction (PCR), virus isolation, or other avian influenza test methods approved by the ~~state veterinarian~~ State Veterinarian and conducted in a laboratory approved by a state or federal animal health authority will be permitted.

~~E. Exemptions.~~

~~1.~~ D. This chapter shall not apply to birds that are passing directly through Virginia to another state in interstate commerce.

~~2. This chapter shall not apply to birds other than poultry when the birds are kept properly under control by their owner or custodian when passing through Virginia to another state.~~

~~3. This chapter shall not apply to birds other than poultry brought into Virginia by a resident or by a resident of another state who intends to make his residence in Virginia except if brought into Virginia with the intent of offering it for public adoption, transfer, sale, trade, or promotional incentive.~~

~~4. This chapter shall not apply to birds other than poultry brought into Virginia for less than 10 days for the purpose of hunting or legal exhibition with no change of ownership.~~

~~F.~~ E. This ~~chapter~~ section shall not be construed to (i) permit the entry into Virginia of any ~~avian~~ species otherwise prohibited or restricted by any state or federal law, regulation, or directive; or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

2VAC5-141-70. Cattle entry requirements; exemptions.

A. Within the 30 days prior to its date of entry into Virginia, cattle must be deemed healthy and free of infectious diseases after examination by an accredited veterinarian and all required tests must be completed. Proof of examination, test results, and official identification must be submitted with the permit request and on a Certificate of Veterinary Inspection in a format approved by the State Veterinarian. All cattle shall be accompanied by an electronic or written Certificate of Veterinary Inspection or alternative movement document approved by the State Veterinarian, which shall be in the possession of the person in charge of such cattle.

B. All cattle entering Virginia must bear individual official identification, and the official identification number must be noted on the ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection or ~~other~~ alternative movement document if approved by the State Veterinarian. ~~If multiple cattle of similar breed, age, and sex are listed on the certificate of veterinary inspection, sequential identification numbers may be summarized.~~ This requirement shall not apply to cattle 18 months of age or younger provided such cattle are not of a dairy type and are imported into Virginia for feeding purposes only.

C. Official identification for cattle shall be:

1. An ear tag or other permanently affixed device bearing a unique identification number issued by an official state or federal program;

2. A USDA back tag if the animal is consigned directly to a slaughter establishment; or

3. Another form of identification approved by the State Veterinarian.

~~B.~~ D. All cattle that originated in or have transited through a foreign country, or are intended to be used for rodeo or other entertainment purposes, require a negative caudal fold or comparative cervical tuberculin test within 60 days prior to entry into Virginia. This requirement shall not apply to cattle consigned directly from a USDA accredited tuberculosis-free herd provided the accreditation number and date of the last herd test are listed on the ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection. Entertainment purposes shall not include the display of cattle at a scheduled agricultural fair, show, or sale.

~~C.~~ E. All cattle originating from a region not considered free of tuberculosis for cattle by the USDA require a permit and a negative caudal fold or comparative cervical tuberculin test within 60 days prior to entry into Virginia. This requirement shall not apply to:

1. Cattle consigned directly from an accredited tuberculosis-free herd provided the accreditation number and date of the last herd test are listed on the ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection; ~~and~~ or

2. Cattle consigned directly to a slaughter establishment.

~~D.~~ F. All sexually intact cattle originating from a region not considered free of brucellosis by the USDA require a permit and an individual brucellosis test within 30 days prior to entry into Virginia. ~~Animals~~ An animal allowed entry under a permit will be quarantined on the premises of the consignee until the animal is retested at the consignee's expense and found negative ~~to~~ for brucellosis no ~~less~~ fewer than 45 days and no more than 120 days after entry as indicated by the permit. This requirement shall not apply to:

1. Cattle consigned directly from a certified brucellosis-free herd provided the certification number and date of the last herd test are listed on the ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection; ~~and~~ or

2. Cattle consigned directly to a slaughter establishment.

G. All bulls 18 months of age and older and all nonvirgin bulls younger than 18 months of age require a negative polymerase chain reaction (PCR) test for bovine trichomoniasis within 30 days prior to entry into Virginia unless consigned directly to a slaughter establishment.

~~E.~~ H. Cattle may be imported for immediate slaughter into Virginia without a ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection provided they are consigned directly to a slaughter establishment. Official identification for all cattle under this subsection must be listed on the waybill.

~~F.~~ I. Cattle from a region considered free of tuberculosis and brucellosis for cattle by the USDA may enter Virginia for the purpose of sale at a ~~livestock~~ marketing facility without a ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection if otherwise required provided:

1. All cattle offered for sale at the ~~livestock~~ marketing facility excepting cattle 18 months of age or younger not of a dairy type and intended for feeding purposes bear official identification upon entry to the ~~livestock~~ marketing facility or have such applied at the ~~livestock~~ marketing facility; and

2. The ~~livestock~~ marketing facility maintains for at least five years and makes available to the State Veterinarian a record of the consignor of the cattle, the identification numbers as required of the cattle he consigns, and the buyer of the cattle.

J. This section shall not be construed to (i) permit the entry into Virginia of any species of animal otherwise prohibited or restricted by any state or federal law, regulation, or directive or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

K. All testing required by this section shall be considered official if (i) conducted by a state, federal, tribal, or accredited veterinarian or (ii) collected by a state, federal, tribal, or accredited veterinarian and conducted by an official animal health laboratory approved by a state or federal animal health agency as dictated by testing protocol.

2VAC5-141-80. ~~Companion~~ Pet animal entry requirements; exemptions.

A. ~~Companion animals must be accompanied by a certificate of veterinary inspection issued within 10 days prior to entry into Virginia~~ Within the 10 days prior to its date of entry into Virginia, a pet animal must be deemed healthy and free of infectious diseases after examination by an accredited veterinarian. Proof of examination must be submitted with the permit request and on a Certificate of Veterinary Inspection in a format approved by the State Veterinarian.

B. No dog or cat ~~less~~ younger than ~~eight~~ seven weeks of age may be imported into Virginia unless accompanied by its dam if the dam is known to be alive.

C. Any dog or cat ~~greater~~ older than four months of age entering Virginia shall be currently vaccinated for rabies.

~~D. Exemptions.~~

~~1. This chapter shall not apply to companion animals that are passing directly through Virginia to another state in interstate commerce.~~

~~2. This chapter shall not apply to companion animals that are kept properly under control by their owner or custodian when passing through Virginia to another state.~~

~~3. This chapter shall not apply to companion animals brought into Virginia by a resident or by a resident of another state who intends to make his residence in Virginia except if brought into Virginia with the intent of offering it for public adoption, transfer, sale, trade, or promotional incentive.~~

~~4. This chapter shall not apply to companion animals brought into Virginia for less than 10 days for the purpose of hunting or legal exhibition with no change of ownership.~~

D. A pet animal kept properly under control by its owner or custodian when traveling through Virginia to another state shall not be subject to the requirements of this chapter.

E. A pet animal brought into Virginia by a resident of Virginia or by a resident of another state who intends to make his residence in Virginia shall not be subject to the requirements of this chapter unless the pet animal is brought into Virginia to be offered for public adoption, transfer, sale, trade, or promotional incentive.

F. A pet animal (i) brought into Virginia for less than 10 days, (ii) for the purpose of hunting or legal exhibition, and (iii) with no change of ownership shall not be subject to the requirements of this chapter.

~~E.~~ G. This ~~chapter~~ section shall not be construed to (i) permit the entry into Virginia of any species of animal otherwise prohibited or restricted by any state or federal law, regulation, or directive~~;~~ or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

2VAC5-141-90. Goat and sheep entry requirements; exemptions.

A. Within the 30 days prior to its date of entry into Virginia, a goat or sheep must be deemed healthy and free of infectious diseases after examination by an accredited veterinarian and all required tests must be completed. Proof of examination, test results, and official identification must be submitted with the permit request and on a Certificate of Veterinary Inspection in a format approved by the State Veterinarian. A goat or sheep shall be accompanied by an electronic or written Certificate of Veterinary Inspection or alternative movement documentation approved by the State Veterinarian, which shall be in the possession of the person in charge of such goat or sheep.

~~All goats and~~ B. A goat or sheep entering Virginia must be officially identified, and the official identification number must be noted on the ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection. ~~If multiple goats or sheep of similar breed, age, and sex are listed on the certificate of veterinary inspection, sequential identification numbers may be summarized. The~~ This requirement shall not apply to castrated male goats that are not subject to the Scrapie Eradication Program.

C. Official identification for a goat or sheep shall be:

1. An official ear tag that is approved by the USDA for use in the Scrapie Eradication Program or the Scrapie Flock Certification Program; or

2. Another form of identification approved by the State Veterinarian.

D. Notwithstanding subsection C of this section, official identification for a goat that is exempt from the identification required by the Scrapie Eradication Program shall be:

1. An ear tag or other affixed device bearing a unique identification number issued by an official state or federal program;

2. A USDA back tag, if the goat is consigned directly to a slaughter establishment; or

3. Another form of identification approved by the State Veterinarian.

~~B. Scrapie control. 1.~~ E. No ~~sheep or~~ goat or sheep may be imported into Virginia that does not originate from a scrapie consistent state unless originating from a flock enrolled in the complete monitored or export monitored category of the USDA Scrapie Flock Certification Program.

~~2.~~ F. No goat or sheep infected with scrapie, or the offspring of a goat or sheep infected with scrapie, may enter Virginia.

~~C. All goats and~~ G. A goat or sheep originating from a region not considered free of tuberculosis for cattle by the USDA shall be ~~negative~~ subject to a tuberculosis test and found negative within 60 days prior to entry into Virginia unless consigned directly to a ~~livestock~~ slaughter establishment. ~~This requirement shall not apply to animals less than six months of age accompanied by their tested dam~~ A goat or sheep six months of age or younger that accompanies its dam that has tested negative for tuberculosis is not subject to this requirement.

~~D. All~~ H. A sexually intact ~~goats and~~ goat or sheep originating from a region not considered free of brucellosis for cattle by the USDA shall be ~~negative~~ subject to a brucellosis test and found negative within 30 days prior to entry into Virginia unless consigned directly to a ~~livestock~~ slaughter establishment. ~~This requirement shall not apply to animals less than six months of age accompanied by their tested dam~~ A goat or sheep six months of age or younger that accompanies its dam that has tested negative for tuberculosis is not subject to this requirement.

~~E. Goats and~~ I. A goat or sheep may be imported for immediate slaughter into Virginia without a ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection

provided ~~they are~~ it is consigned directly to a ~~livestock~~ slaughter establishment ~~or to a marketing facility and from there directly to a livestock slaughter establishment~~ and its official identification is listed on the waybill.

~~F. Goats and~~ J. A goat or sheep from a region considered free of tuberculosis and brucellosis for cattle by the USDA may enter Virginia for the purpose of sale at a marketing facility without a ~~certificate of veterinary inspection if otherwise required~~ Certificate of Veterinary Inspection provided that:

1. The ~~goats and~~ goat or sheep ~~bear any required~~ bears official identification upon entry to the marketing facility or have has such applied at ~~the~~ an approved marketing facility; and

2. The marketing facility maintains for at least five years and makes available to the State Veterinarian a record of the consignor of the ~~goats and~~ goat or sheep, the identification numbers as required of the ~~goats and~~ goat or sheep he consigns, and the buyer of the ~~goats and~~ goat or sheep.

K. This section shall not be construed to (i) permit the entry into Virginia of any species of animal otherwise prohibited or restricted by any state or federal law, regulation, or directive or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

L. All testing required by this section shall be considered official if (i) conducted by a state, federal, tribal, or accredited veterinarian or (ii) collected by a state, federal, tribal, or accredited veterinarian and conducted by an official animal health laboratory approved by a state or federal animal health agency as dictated by testing protocol.

2VAC5-141-100. Horse entry requirements; exemptions.

A. Within the 30 days prior to its date of entry into Virginia, a horse must be deemed healthy and free of infectious diseases after examination by an accredited veterinarian, and all required tests must be completed. Proof of examination, test results, and official identification must be submitted with the permit request and on a Certificate of Veterinary Inspection in a format approved by the State Veterinarian. All horses shall be accompanied by an electronic or written Certificate of Veterinary Inspection or alternative movement documentation approved by the State Veterinarian, which shall be in the possession of the person in charge of such horses.

B. All horses entering Virginia must be officially identified, and the official identification must be noted on the ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection or official equine interstate event permit.

C. Official identification for a horse shall be:

1. A thorough written or photographic record of the horse's appearance directly noted on or affixed to the Certificate of Veterinary Inspection and endorsed by the issuing veterinarian;

2. A legible breed association tattoo number;

3. An affixed or implanted device, such as a microchip, bearing a unique identification number issued by a state or federal program or a breed or performance association that allows the State Veterinarian access to records; or

4. Another form of identification approved by the USDA or the State Veterinarian.

~~B. Equine infectious anemia testing.1.~~ D. All horses imported into Virginia shall have been officially tested and found negative for equine infectious anemia within the ~~past~~ 12 months prior to entry into Virginia and be accompanied by an official certificate stating this information. ~~2. Horses~~ A horse that ~~originate~~ originates from ~~infected~~ an equine infectious anemia-infected premises in ~~other states are~~ another state is not eligible for entry into Virginia except by permit at the State Veterinarian's discretion. ~~3. Foals~~ A foal six months of age or ~~under~~ younger accompanying ~~a~~ its tested negative dam ~~are~~ is exempt from equine infectious anemia testing.

~~C. Contagious equine metritis control. 1.~~ E. No sexually intact horse ~~over~~ older than two years of age that either originated in or has passed through ~~premises or a country~~ a region where contagious equine metritis is known to exist may enter into Virginia except by permit.

~~2. Horses~~ A horse that ~~are~~ is issued a permit shall be permanently identified with an affixed or implanted device, such as a microchip, bearing a unique identification number issued by a state or federal program and will be immediately placed under quarantine and assigned a testing protocol at the consignee's expense until the State Veterinarian is satisfied that ~~they pose~~ it poses no danger to the Virginia equine population.

~~D. Horses~~ F. A horse may enter Virginia with an official equine interstate event permit issued by another state in lieu of ~~certificate of veterinary inspection~~ a Certificate of Veterinary Inspection provided the permit is not expired.

G. This section shall not be construed to (i) permit the entry into Virginia of any species of animal otherwise prohibited or restricted by any state or federal law, regulation, or directive or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

H. All testing required by this section shall be considered official if (i) conducted by a state, federal, tribal, or accredited veterinarian or (ii) collected by a state, federal, tribal, or accredited veterinarian and conducted by an official animal

health laboratory approved by a state or federal animal health agency as dictated by testing protocol.

2VAC5-141-110. Other ruminant entry requirements; exemptions.

A. Within the 30 days prior to its date of entry into Virginia, an other ruminant must be deemed healthy and free of infectious diseases after examination by an accredited veterinarian, and all required tests must be completed. Proof of examination, test results, and official identification must be submitted with the permit request and on a Certificate of Veterinary Inspection in a format approved by the State Veterinarian. All other ruminants shall be accompanied by an electronic or written Certificate of Veterinary Inspection or alternative movement documentation approved by the State Veterinarian, which shall be in the possession of the person in charge of such other ruminants.

B. All other ruminants entering Virginia must bear an individual identification number, and such identification number must be noted on the ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection. Identification can be a ~~tattoo,~~ microchip, ear tag issued by a state or federal entity, or other form of identification approved by the State Veterinarian.

~~B. All~~ C. Any other ~~ruminants~~ ruminant originating from a region not considered free of tuberculosis for cattle by the USDA shall be ~~negative~~ subject to a tuberculosis test and found negative within 60 days prior to entry into Virginia. ~~This requirement shall not apply to animals less than six months of age accompanied by their tested dam~~ Any other ruminant six months of age or younger that is accompanying its dam that has tested negative for tuberculosis is not subject to this requirement.

~~C. All~~ D. Any sexually intact other ~~ruminants~~ ruminant originating from a region not considered free of brucellosis for cattle by the USDA shall be ~~negative~~ subject to a brucellosis test and found negative within 30 days prior to entry into Virginia. ~~This requirement shall not apply to animals less than six months of age accompanied by their tested dam~~ Any sexually intact other ruminant six months of age or younger that is accompanying its dam that has tested negative for brucellosis is not subject to this requirement.

~~D.~~ E. This ~~chapter~~ section shall not be construed to (i) permit the entry into Virginia of any species of animal otherwise prohibited or restricted by any state or federal law, regulation, or directive~~;~~ or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

F. All testing required by this section shall be considered official if (i) conducted by a state, federal, tribal, or accredited veterinarian or (ii) collected by a state, federal, tribal, or accredited veterinarian and conducted by an official animal health laboratory approved by a state or federal animal health agency as dictated by testing protocol.

2VAC5-141-120. Swine entry requirements; exemptions.

A. Within the 30 days prior to its date of entry into Virginia, a swine must be deemed healthy and free of infectious diseases after examination by an accredited veterinarian and all required tests must be completed. Proof of examination, test results, and official identification must be submitted with the permit request and on a Certificate of Veterinary Inspection in a format approved by the State Veterinarian. All swine shall be accompanied by an electronic or written Certificate of Veterinary Inspection or alternative movement documentation approved by the State Veterinarian, which shall be in the possession of the person in charge of such swine.

B. All swine entering Virginia must bear an identification number, and the identification number must be noted on the ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection.

C. Official identification for a swine shall be:

1. An ear tag or other affixed device bearing a unique individual or group identification number issued by an official state or federal program;

2. An official premises identification tattoo that includes the state of origin; or

3. Another form of identification approved by the State Veterinarian.

~~B. Swine~~ D. A swine originating from a herd or region that is considered free from brucellosis and pseudorabies by a federal program or a state program approved by the State Veterinarian may enter Virginia without further testing requirements provided a statement indicating the region is considered free from brucellosis and pseudorabies by a federal or state program or verification of herd participation in the federal or state program is indicated on the ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection, and the swine ~~have~~ has not had known contact with free roaming swine.

~~C. Sexually~~ E. A sexually intact swine over four months of age not originating from a herd or region considered free of brucellosis by a federal program or a state program approved by the State Veterinarian must be ~~negative~~ individually subject to a brucellosis test and found negative within 30 days prior to entry into Virginia. A sexually intact swine shall be quarantined at the premises of destination until such time as it is retested between 30 and 60 days after importation into Virginia at the consignee's expense.

~~D. Swine~~ F. A swine not originating from a herd or region that is considered free from pseudorabies by a federal program or a state program approved by the State

Veterinarian shall be individually ~~tested and negative~~ subject to a pseudorabies test and found negative within 30 days prior to entry into Virginia. ~~Sexually intact swine shall be quarantined at the premises of destination until retested between 30 and 60 days after importation at the consignee's expense.~~

~~E. Slaughter swine entry requirements.~~ G. A swine that is free roaming or that has had known contact with free roaming swine must have tested negative for brucellosis and pseudorabies within 30 days prior to entry into Virginia.

~~Swine~~ H. A swine may be imported for immediate slaughter into Virginia without a ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection provided ~~they are~~ it is consigned directly to a slaughter establishment.

~~F. Swine~~ I. A swine intended for feeding purposes and not intended for breeding purposes from a farm of origin in a state adjoining Virginia and from a region therein considered free of pseudorabies by a federal or state program may enter Virginia without a ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection if an alternative movement document that has been approved by the State Veterinarian is submitted as required.

~~G. Swine that are, or have had known contact with, free roaming swine must have tested negative for pseudorabies and brucellosis within 30 days prior to entry into Virginia.~~

J. This section shall not be construed to (i) permit the entry into Virginia of any species of animal otherwise prohibited or restricted by any state or federal law, regulation, or directive or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

K. All testing required by this section shall be considered official if (i) conducted by a state, federal, tribal, or accredited veterinarian or (ii) collected by a state, federal, tribal, or accredited veterinarian and conducted by an official animal health laboratory approved by a state or federal animal health agency as dictated by testing protocol.

2VAC5-141-130. Primate entry requirements; exemptions.

A. ~~All primates imported into Virginia require a certificate of veterinary inspection issued within 10 days prior to entry~~ Within the 10 days prior to its date of entry into Virginia, a primate must be deemed healthy and free of infectious diseases after examination by an accredited veterinarian, and all required tests must be completed. Proof of examination and test results must be submitted with the permit request and on a Certificate of Veterinary Inspection in a format approved by the State Veterinarian.

B. All primates imported into Virginia must be microchipped, and such microchip number must be noted on the ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection.

C. The ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection shall include a statement attesting to the fact that the veterinarian has carefully examined the oral mucosa of the primate and has found no evidence of disease lesions or inflammatory processes.

D. ~~Tuberculosis testing requirements. 1. Primates~~ A primate imported into Virginia shall ~~have a negative~~ be subject to a tuberculosis test performed by a state, federal, tribal, or accredited veterinarian and be found negative within 30 days prior to entry into Virginia. If using a tuberculosis test other than the intradermal test, it is permissible for test results to be recorded on the ~~certificate of veterinary inspection~~ Certificate of Veterinary Inspection as pending, as long as the results are reported to the State Veterinarian within three business days of entry and the ~~animals are~~ animal is isolated upon arrival until the test results are reported.

~~2. Primates~~ E. A primate that ~~have~~ has been associated with a colony ~~where there have been~~ in which other primates ~~showing~~ have shown a response to the tuberculin test shall not be eligible for entry into Virginia until all primates in the colony ~~shall~~ have passed two consecutive tuberculosis tests not less than 30 days apart.

~~E. Exceptions.~~

~~1. This chapter shall not apply to primates that are passing directly through Virginia to another state in interstate commerce.~~

~~2. This chapter shall not apply to primates that are kept properly under control by their owner or custodian when passing through Virginia to another state.~~

~~3. This chapter shall not apply to primates brought into Virginia by a resident or by a resident of another state who intends to make his residence in Virginia, except if brought into Virginia with the intent of offering it for public adoption, transfer, sale, trade, or promotional incentive.~~

~~4. This chapter shall not apply to primates brought into Virginia for less than 10 days for the purpose of legal exhibition with no change of ownership.~~

F. A primate kept properly under control by its owner or custodian when traveling through Virginia to another state shall not be subject to the requirements of this chapter.

G. A primate brought into Virginia by a resident of Virginia or by a resident of another state who intends to make his residence in Virginia shall not be subject to the requirements of this chapter unless the primate is brought into Virginia to be offered for public adoption, transfer, sale, trade, or promotional incentive.

H. A primate brought into Virginia for fewer than 10 days for the purpose of legal exhibition with no change of ownership shall not be subject to the requirements of this chapter.

I. This section shall not be construed to (i) permit the entry into Virginia of any species of animal otherwise prohibited or restricted by any state or federal law, regulation, or directive or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

J. All testing required by this section shall be considered official if (i) conducted by a state, federal, tribal, or accredited veterinarian or (ii) collected by a state, federal, tribal, or accredited veterinarian and conducted by an official animal health laboratory approved by a state or federal animal health agency as dictated by testing protocol.

~~FORMS (2VAC5-141)~~

~~Application for Approval Number for the Importation of Poultry, Form OVS1201 (eff. 1/12).~~

VA.R. Doc. No. R19-5158; Filed November 26, 2018, 3:07 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-360. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish (amending 4VAC15-360-30).**

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

Public Hearing Information:

January 24, 2019 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Richmond, VA 23228

Public Comment Deadline: December 31, 2018.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.gov.

Summary:

The proposed amendments address snapping turtle population reduction concerns occurring from unregulated harvest by capping annual permit issuance, number of traps per permit, and minimum carapace (shell) length and imposing other conditions intended to keep the statewide harvest of breeding adults at or below 50,000 pounds annually to assure population viability while providing for regulated commercial harvest, including a Virginia residency requirement intended to buffer market-driven impacts when out-of-state commercial harvesters have accounted for as much as 70% of statewide harvests annually due to high market demands.

4VAC15-360-30. Taking of snapping turtles, crayfish and hellgrammites for sale.

A. It shall only be lawful to take and sell snapping turtles ~~and hellgrammites~~ with a Permit to Collect and Sell Snapping Turtles and Hellgrammites ~~or a Permit to Hold and Sell Certain Wildlife under such restrictions and conditions as the board may prescribe~~. The director may issue, deny, modify, suspend, or revoke a Permit to Collect and Sell Snapping Turtles and Hellgrammites. Such permits shall be valid provided that the harvest of snapping turtles is not otherwise prohibited by state or federal law or regulation. To be eligible to harvest snapping turtles, an applicant must be a Virginia resident and submit an annual report.

1. It shall be unlawful to harvest any snapping turtle with less than a 13-inch curved carapace length.

2. It shall be unlawful to harvest snapping turtles from October 1 through May 31.

3. It shall be unlawful for permit holders to take any species other than snapping turtles.

4. The department will issue a maximum of 25 permits per year. No more than one individual residing at a single address may be issued a permit. Permits are not transferable.

5. It shall be unlawful to operate more than 20 traps per permit. The permit number or name and address of permittee shall be marked on all traps.

6. Hoop nets or similar homemade traps shall be the only lawful form of trapping snapping turtles. Hoop nets or other traps shall not exceed six feet in length with a throat opening that does not exceed 36 inches.

7. Permit holders must check all traps at least once each day and remove all captured animals.

8. Permit applications will be issued in the order received, to the maximum annual number.

9. Failure to comply with the harvest and sales reporting requirements as detailed in conditions of the permit shall be unlawful and may result in immediate permit revocation and loss of harvest privileges for a minimum of one year.

10. It shall be the permit holder's responsibility to report "no activity" when no activity occurs during the permit period.

B. It shall only be lawful to take and sell hellgrammites with a Permit to Collect and Sell Snapping Turtles and Hellgrammites or a Permit to Hold and Sell Certain Wildlife under such restrictions and conditions as the board may prescribe.

C. It shall be lawful to hold and sell crayfish with a Permit to Hold and Sell Certain Wildlife under such restrictions as the board may prescribe.

VA.R. Doc. No. R19-5773; Filed December 3, 2018, 2:59 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia.

Title of Regulation: **4VAC15-380. Watercraft: Motorboat Numbering (amending 4VAC15-380-120).**

Statutory Authority: §§ 29.1-701 and 29.1-701.1 of the Code of Virginia.

Public Hearing Information:

January 24, 2019 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Richmond, VA 23228

Public Comment Deadline: December 31, 2018.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.gov.

Summary:

The proposed amendments (i) increase registration and titling fees and (ii) list titling fees that were not listed in the regulation.

4VAC15-380-120. Certificate of registration and titling fees.

A. The following fees shall be paid by applicants for certificates of registration:

For a motorboat under 16 feet	~~$27~~ $32
For a motorboat 16 feet to less than 20 feet	~~$31~~ $36
For a motorboat 20 feet to less than 40 feet	~~$37~~ $42
For a motorboat 40 feet and over	~~$45~~ $50
For first 10 actively registered motorboats by the same owner	~~$27~~ $32
For more than 10 actively registered motorboats by the same owner	~~$21~~ $26
For a duplicate certificate of registration ~~and/or~~ or decal	~~$9~~ $14

B. The following fees shall be paid by applicants for certificates of title:

Titling fee	$10
Duplicate title	$7
Change of motor on title	$7
Record supplemental lien on previously titled watercraft	$10

VA.R. Doc. No. R19-5774; Filed December 3, 2018, 2:56 p.m.

MARINE RESOURCES COMMISSION

Final Regulation

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

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

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

Effective Date: 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.

Summary:

The amendments (i) adjust the open dates of Rappahannock River Rotational 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 December 11, 2018, 1:30 p.m.

Final Regulation

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

Title of Regulation: **4VAC20-1180. Pertaining to Fishing Guides (amending 4VAC20-1180-40).**

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

Effective Date: January 1, 2019.

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.

Summary:

The amendments establish the number of Class A fishing guide licenses available for purchase from the Marine Resources Commission each year as 240 for Virginia residents and 38 for nonresidents.

4VAC20-1180-40. Limited sale of the Class A fishing guide license and conditional sale of the Class B fishing guide license.

The commissioner has determined that the requirements for the fishing guide license in Maryland are substantially similar and reciprocal with the Class A fishing guide license, and the following provisions and qualifications shall define the administration of the Class A fishing guide license:

1. It shall be unlawful for any person to serve as the captain of a charter boat or head boat without first qualifying for and obtaining a Class A or Class B fishing guide license or a fishing guide reciprocity permit.

2. An applicant shall be considered qualified for the Class A fishing guide license once that applicant satisfies the following conditions:

a. The applicant shall be licensed by the U.S. Coast Guard to carry passengers for hire and shall include a copy of his current U.S. Coast Guard license with the application.

b. The applicant shall have purchased, as the licensee, a 2008 Virginia charter boat or head boat license before June 25, 2008, or shall have purchased, as the licensee, Virginia charter boat or head boat licenses in 2006 and 2007~~, or can document that he has served as captain of a vessel for at least 30 days from January 1, 2006, through June 24, 2008, operating in Virginia waters that was licensed as a Virginia charter boat or head boat and provides a certificate of insurance listing him as the captain of a Virginia charter boat or head boat or federal tax form W-2 or 1099, listing his income as the captain of a Virginia charter boat or head boat during the period January 1, 2006, through June 24, 2008. An additional form of documentation of the 30 day service as captain may include evidence that the applicant was enrolled during the qualifying period in a U.S. Coast Guard required random drug testing program for the business owning the qualifying vessel~~.

3. A Class A fishing guide licensee shall be required to purchase a Class A fishing guide license annually to maintain his eligibility to purchase a Class A fishing guide license for the following year.

4. The number of Class A fishing guide licenses sold in any one year shall not exceed 240 for residents of Virginia and 38 for nonresidents, which are the ~~number~~ numbers of persons meeting the qualifications specified in ~~this section~~ subdivision 2 b of this section.

5. An applicant shall be considered qualified for the Class B fishing guide license once he provides documentation that he is licensed by the U.S. Coast Guard to carry passengers for hire and can provide a copy of his current U.S. Coast Guard license with the application.

VA.R. Doc. No. R19-5778; Filed December 11, 2018, 1:37 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

REGISTRAR'S NOTICE: The State Board of Education is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The State Board of Education will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **8VAC20-70. Regulations Governing Pupil Transportation (amending 8VAC20-70-350).**

Statutory Authority: §§ 22.1-16, 22.1-176, and 22.1-177 of the Code of Virginia.

Effective Date: January 23, 2019.

Agency Contact: Kerry Miller, Associate Director of Pupil Transportation, Department of Education, 101 North 14th Street, 24th floor, Richmond, VA 23238, telephone (804) 225-2772, or email kerry.miller@doe.virginia.gov.

Summary:

Pursuant to Chapters 203, 389, and 586 of the 2018 Acts of Assembly, the amendments (i) require minimum hours of classroom and behind-the-wheel training for school bus drivers and (ii) establish a training program required for school board employees who assist in the transportation of students with autism spectrum disorders on school buses.

8VAC20-70-350. Training.

No person shall operate a school or activity bus transporting pupils unless the person has:

1. Received classroom, demonstration, and behind-the-wheel instruction in accordance with a program developed by the Department of Education pursuant to § 22.1-181 of the Code of Virginia.

2. ~~Completed~~ For persons not currently possessing a commercial driver's license, the individual shall complete a minimum of 24 ~~classroom~~ hours of classroom training and ~~24~~ six hours of behind-the-wheel training on a school bus that contains no pupil passengers. ~~A minimum of 10 of the 24 hours of behind the wheel time shall involve the operation of a bus with pupils on board while~~ For persons currently possessing a commercial driver's license, the individual shall complete a minimum of four hours classroom training and three hours of behind-the-wheel training on a school bus that contains no pupil passengers. Behind-the-wheel training shall be administered under the direct on-board supervision of a designated bus driver trainer. All drivers shall receive training in the operation of buses representative of the type used in the school division in which they will be employed and in the transportation of students with special needs. Classroom instruction means training provided by a qualified driver instructor through lectures, demonstrations, audio-visual presentations, computer-based instruction, driving simulation devices, or similar means. Instruction occurring outside a classroom qualifies as classroom instruction if it does not involve actual operation of a school bus and its components by the trainee. Behind-the-wheel training does not include time spent riding in a school bus or observing the operation of a school bus when the trainee is not in control of the vehicle.

The superintendent or his designee shall maintain a record showing that the applicant has completed the training and has been approved to operate a school or activity bus.

3. New transportation directors/supervisors employed by school divisions shall complete the ~~"Train the Trainer"~~ "New Director/Supervisor" class conducted by the Department of Education within a year after being employed in this position.

4. Each local school board employee who assists in the transportation of students with autism spectrum disorders on school buses, including individuals employed to operate school buses and school bus aides, shall participate in a training program on autism spectrum disorders established by the Board of Education. Such training shall include the characteristics of autism spectrum disorders, strategies for interacting with students with autism spectrum disorders, and collaboration with other employees who assist in the transportation of students on school buses.

VA.R. Doc. No. R19-5690; Filed November 26, 2018, 4:26 p.m.

Proposed Regulation

Title of Regulation: **8VAC20-760. Regulations Governing the Designation of School Divisions of Innovation (adding 8VAC20-760-10 through 8VAC20-760-50).**

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

Public Hearing Information:

January 24, 2019 - 11:30 a.m. - James Monroe Building, 101 North 14th Street, 22nd Floor, Conference Room, Richmond, VA 23219. The public hearing will begin immediately following adjournment of the Board of Education business meeting.

Public Comment Deadline: February 22, 2019.

Agency Contact: Emily V. Webb, Director for Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2924, FAX (804) 225-2524, or email emily.webb@doe.virginia.gov.

Basis: The Board of Education's overall regulatory authority is in § 22.1-16 of the Code of Virginia. The Board of Education's authority for promulgating regulations governing the designation of School Divisions of Innovation is pursuant to Chapter 760 of the 2017 Acts of Assembly, which adds Article 1.5 (§ 22.1-212.28 et seq.) of Chapter 13 of Title 22.1 of the Code of Virginia, relating to School Divisions of Innovation (SDIs). Article 1.5, which became effective on July 1, 2017, and directs the Board of Education to develop regulations for the designation of SDIs.

Purpose: The purpose of this regulatory action is to establish a procedure for school divisions to be designated as a School Division of Innovation and develop creative alternatives to instructional and administrative practices or school structures to improve student learning and educational performance. Encouraging innovation education practices is advantageous to all citizens in the Commonwealth and promotes public safety, health, and welfare. This action fulfills the General Assembly's directive that regulations be developed for the designation of SDI. These regulations specify the procedure and timeline for SDI designation.

Substance: The proposed regulations govern the designation of SDIs. The proposed regulations establish the procedure and criteria for the designation of an SDI and provide that the Superintendent of Public Instruction establish a format and timelines for local school boards to submit plans of innovation. The proposed regulations prohibit any exemptions from certain requirements, including special education regulations, graduation requirements, and other regulations that are mandated by state or federal law or are designed to promote health or safety. The proposed regulations also include provisions to evaluate the performance of an SDI, including revocation in the event that performance expectations are not met.

Issues: The primary advantage to the public is that the promulgation of these regulations will help provide high-quality, effective learning environments for all students in the Commonwealth by allowing alternative policies to be developed and implemented to address the diverse needs of students. Staff has identified no disadvantage to the public or the Commonwealth of the proposed regulations.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 760 of the 2017 Acts of Assembly,[1] the Virginia Board of Education (Board) proposes to promulgate a regulation for the designation of School Division of Innovation (SDI).

Result of Analysis. The benefits likely exceed the costs for most proposed amendments.

Estimated Economic Impact. Chapter 760 added Article 1.5: School Divisions of Innovation. Article 1.5 consists of sections numbered § 22.1-212.28 through § 22.1-212.32, relating to SDI. Code of Virginia § 22.1-212.28 defines SDI as:

> … a school division in which the local school board has developed and for which the Board has approved pursuant to regulations as set forth in this article a plan of innovation to improve student learning; educational performance; and college, career, and citizenship readiness skills in each school in the local school division.

Code of Virginia § 22.1-212.29 states that:

> The Board shall promulgate regulations for the designation of School Divisions of Innovation in which

the local school board in the local school division so designated shall, pursuant to a plan of innovation, be exempted from selected regulatory provisions and be permitted to adopt alternative policies for school administrators, teachers, and staff to meet the diverse needs of students.

The designation of SDI is new, but the potential granting of exemption from regulatory provisions at the discretion of the Board is not.

Standards of Quality Standard 3 (§ 22.1-253.13:3.H)[2] allows the Board of Education to, at its discretion, waive regulatory requirements upon request from a local school board. The proposed Regulations Governing the Designation of School Divisions of Innovation neither increases nor decreases local school divisions ability to obtain waivers from regulations. The proposed regulation, pursuant to Chapter 760, does create the School Division of Innovation designation. School divisions may find this designation beneficial for communicating with the public and garnering support.

Businesses and Entities Affected. The proposed amendments potentially affect the 132 public school divisions in the Commonwealth.

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

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

Real Estate Development Costs. The proposed amendments do not significantly 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 amendments do not significantly affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?171+ful+CHAP0760

[2]See https://law.lis.virginia.gov/vacode/title22.1/chapter13.2/section22.1-253.13:3/

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

Summary:

The proposed regulation establishes the School Division of Innovation (SDI) designation process and timeline, expectations for a plan of innovation, procedures for ongoing evaluation of an SDI, and regulations that may be waived in conjunction with an SDI application.

CHAPTER 760
REGULATIONS GOVERNING THE DESIGNATION OF SCHOOL DIVISIONS OF INNOVATION

8VAC20-760-10. Definitions.

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

"Board of Education" or "board" means the board responsible for the general supervision of the public school system in Virginia as prescribed in Section 4 of Article VIII of the Constitution of Virginia and § 22.1-8 of the Code of Virginia.

"Innovation" means a new or creative alternative to existing instructional or administrative practices or school structures that evidence-based practice suggests will be effective in improving student learning and educational performance.

"School Division of Innovation" or "SDI" means a school division in which the local school board has developed and for which the board has approved a plan of innovation to improve student learning; educational performance; and college, career, and citizenship readiness skills in one or more schools, for the benefit of all schools in the school division.

8VAC20-760-20. School Division of Innovation designation.

A. Any local school board may apply to the board for the local school division to be designated as an SDI.

B. Pursuant to a plan of innovation, an SDI shall be exempted from selected regulatory provisions and permitted to adopt alternative policies for school administrators, teachers, and staff to meet the diverse needs of students.

C. An application for an SDI designation shall consist of a plan of innovation for the local school division, following a

format prescribed by the Superintendent of Public Instruction. The plan of innovation shall include:

1. Goals and performance targets that may include:

a. Reducing achievement and opportunity gaps among groups of public school students by expanding the range of engaging and relevant learning experiences for students who are identified as academically low-achieving;

b. Increasing student learning through the implementation of high, rigorous standards for student performance and balanced assessments that measure both student growth and achievement;

c. Creating opportunities for students to demonstrate mastery of learning at different points in the learning process based on readiness;

d. Increasing student participation in opportunities that enhance students' preparation for college, career, and citizenship;

e. Increasing the number of students who are college, career, and citizenship ready;

f. Increasing opportunities for students to learn from content experts through integrated course opportunities; or

g. Motivating students at all levels by offering additional curricular choices, personalized learning opportunities, and relevant student learning experiences such as community service projects, internship opportunities, and job shadowing;

2. Divisionwide and school-level policies that will lead students to be better prepared for success in work and life;

3. A description of the ways in which designated schools will incorporate innovative practices;

4. A description of how schools in the division will benefit from innovative practices and share experiences and practices for application in other schools;

5. The incorporation of relevant professional development;

6. Evidence of collaboration, support, and shared leadership among teachers in the school division;

7. Evidence of the support and engagement of educators, parents, the local community, and the local business community in the development of the plan of innovation and of the capacity of such individuals and entities to support the implementation of innovation;

8. Any requests for exemptions from regulatory provisions as provided in 8VAC20-760-30, including the rationale for such exemptions and alternative policies; and

9. Specific measures of student success that may include alternate assessments or approved substitute tests that will be used to determine if students have met graduation requirements, as applicable.

D. Applications for SDI designation shall conform to a format and timeline prescribed by the Superintendent of Public Instruction. The timeline shall include deadlines for (i) a preapplication conference to be held with staff if any exemptions are requested and (ii) submission for consideration by the board.

8VAC20-760-30. Exemption from regulatory provisions.

A. In conjunction with the designation of an SDI, the board may exempt a local school board from board regulations as requested in a school division's plan of innovation. However, the board shall not grant exemptions from the following provisions:

1. Regulations mandated by state or federal law;

2. Regulations designed to promote health or safety;

3. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81);

4. Student achievement expectations (8VAC20-131-30);

5. Requirements for graduation (8VAC20-131-50 and 8VAC20-131-51);

6. Program of instruction and learning objectives (8VAC20-131-70); or

7. Part VIII of the Regulations Establishing Standards for Accrediting Public Schools in Virginia, School Accreditation (8VAC20-131-370 through 8VAC20-131-430).

B. The board may grant all or a portion of any request for such an exemption and designate conditions as appropriate.

8VAC20-760-40. Approval, amendment, and renewal.

A. The designation of an SDI shall be for a five-year period beginning with the school year following the board's approval.

B. SDI designations may be renewed for subsequent periods not to exceed five years each.

C. School boards seeking to amend a plan of innovation shall be required to seek board approval following the same procedure as provided in 8VAC20-760-20.

8VAC20-760-50. Evaluation.

A. Each SDI shall annually submit to the Department of Education, prior to a date designated by the Superintendent of Public Instruction, information demonstrating progress toward meeting the goals and performance targets included in the approved plan of innovation.

B. Such information shall be considered by the board when possible SDI designation renewals are being reviewed.

C. The board may revoke an SDI designation prior to the end of the five-year approval period in circumstances where it deems appropriate, including:

1. Continued failure to meet goals and performance targets established in the plan of innovation.

2. Continued failure to maintain accredited status for any school subject to the SDI designation.

VA.R. Doc. No. R18-5324; Filed November 27, 2018, 1:56 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Fast-Track Regulation

Title of Regulation: **9VAC20-130. Solid Waste Planning and Recycling Regulations (amending 9VAC20-130-10, 9VAC20-130-30, 9VAC20-130-60, 9VAC20-130-100, 9VAC20-130-110, 9VAC20-130-120, 9VAC20-130-125, 9VAC20-130-175, 9VAC20-130-230; adding 9VAC20-130-92 through 9VAC20-130-98, 9VAC20-130-173; repealing 9VAC20-130-180 through 9VAC20-130-220).**

Statutory Authority: § 10.1-1411 of the Code of Virginia; 42 USC § 6942(b); 40 CFR Parts 255 and 256.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 23, 2019.

Effective Date: February 7, 2019.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Basis: Section 4002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC § 6942(b)), requires all states to develop and implement state solid waste management plans. 40 CFR Parts 255 and 256 contain requirements applicable to state solid waste management plans.

Section 10.1-1402 of the Code of Virginia directs the Virginia Waste Management Board to "Supervise and control waste management activities in the Commonwealth." Section 10.1-1411 of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate this regulation, which is required to include all aspects of solid waste management, including waste reduction, recycling and reuse, storage, treatment, and disposal. The board is also required to consider urban concentrations, geographic conditions, markets, transportation conditions, and other appropriate factors and provide reasonable variances and exemptions from regulatory requirements when adopting this regulation.

Purpose: The Code of Virginia directs the Virginia Waste Management Board to adopt this regulation, which establishes requirements for localities to conduct planning efforts to ensure that solid waste is properly managed now and in the future. The regulation also implements the mandatory recycling rates described in state statute. These solid waste planning requirements are similar to the planning efforts that localities undertake to ensure their locality is planning for the future and is able to provide general services to their residents. This regulation allows localities to develop their own solid waste management plan or work with other localities to form a regional solid waste management plan. Solid waste management plans ensure that the locality or region is working to meet mandatory recycling rates and is preparing for future waste management needs. These actions reduce the amount of waste required to be disposed of and strive to protect the health and welfare of citizens from impacts related to improper management of solid waste.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is expected to be noncontroversial. The amendments clarify the requirements of the regulation and do not add any new requirements. There are no additional impacts to the regulated community as a result of these amendments. The changes to the regulation improve the readability and understanding of the regulation. The changes also make the regulation consistent with state statute.

Substance: The regulation is being reorganized to assist the regulated community with understanding and complying with the requirements of the regulation. Sections of the regulation are being rearranged to appear in the order the regulated community would use the regulation. For example, the regulation currently discusses the designation of solid waste planning units after the requirements for the content of solid waste plans are discussed. Prior to developing a solid waste management plan, the membership of the planning unit must be established. The logical progression would be to discuss the establishment of solid waste planning units prior to discussing the plans the planning units are required to develop. Rearranging the order of the sections of the regulation will make understanding the correct order tasks described in the regulation need to occur easier for a reader.

Changes have been made to the definition section. Obsolete definitions are removed from the regulation. Removing the definitions of terms that are not used in the regulation will help to avoid confusion concerning the applicability of these terms. For example, the term "white good" is defined in the definition section of the regulation; however, the term is not found in other sections of the regulation. As part of this amendment, the term "white good" is being removed from the regulation. Two additional definitions have been added to the

regulation in response to a comment received during the informal comment period. Definitions of the terms "nonmunicipal solid waste material" and "solid waste management plan" have been included in the regulation to provide additional clarity to the regulation.

Additional details concerning the calculation of recycling rates have been included in the regulation. The calculation in the current regulation does not calculate the recycling rate as a percentage. The current calculation also mentions the inclusion of credits in the recycling rate but fails to explain how these credits are added to the recycling rate. This lack of explanation causes confusion since credits allowed may be expressed in tons or percentages. Additional details have been added to this section to address the inclusion of credits in the recycling rate. The regulatory language now mirrors the information on Department of Environmental Quality form 50-30 that is provided to solid waste planning units to assist them with calculating their recycling rate.

The recycling credits listed in the regulation have been reordered to be listed in the same order as they appear in § 10.1-1411 C of the Code of Virginia. Only those recycling credits detailed in statute are being included in the regulation.

Issues: The revisions to the regulation will make the regulation easier for the public and the regulated community to understand. The agency will benefit by having a regulation that is easier for the regulated community to understand. There are no disadvantages to the public, regulated community, or the agency from making these changes.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (Board) proposes to amend its regulation governing solid waste planning and recycling for localities. Most of the changes proposed by the Board are non-substantive. Such changes include adding and modifying definitions, moving regulatory sections and updating obsolete references. Additionally, the Board proposes two substantive changes to regulatory text: 1) the Board proposes to remove a separate one-ton credit for "each inoperable vehicle for which a locality receives reimbursement from the Virginia Department of Motor Vehicles" and 2) the Board proposes to replace the formula for recycling rates that is currently in the regulation with an easier to use formula that is mathematically equivalent.

Result of Analysis. Benefits likely outweigh costs for all proposed changes.

Estimated Economic Impact. Many changes that the Board proposes for this regulation will not modify or add any substantive requirement for regulated entities but, instead, are aimed at clarifying existing regulatory requirements. For instance, the Board proposes to add definitions for "nonmunicipal solid waste material" and "solid waste management plan" to the regulatory text. No affected entities will incur costs on account of changes such as these. Interested parties will benefit from the added definitions and the changed structure of the regulation as it will make it both easier to find and read any particular standard. Benefits likely outweigh costs for all reorganizing and clarifying changes.

The Board also proposes to remove language that allowed a one-ton credit for every inoperable vehicle for which a locality receives reimbursement under § 46.2-1407 of the Code of Virginia. Localities will instead be able to claim credit for such vehicles by adding them to the amount of principal recyclable materials. Board staff reports that this change will likely have no impact on localities' calculated recycling rates.

Finally, the Board proposes to replace the formula for calculating minimum recycling rates. Board staff reports that the replacement formula is mathematically equivalent to the formula in current regulation, but that the proposed formula defines all terms so will be easier to use. Board staff reports that the formula that the Board proposes to add to the regulation is already in use on forms that localities must fill out. This change will benefit affected entities as the regulatory formula will be both easier to calculate and consistent with what they already use.

Businesses and Entities Affected. This proposed action will affect all localities and solid waste management planning units in the Commonwealth.

Localities Particularly Affected. No locality in the Commonwealth is likely to be particularly affected by this proposed regulation.

Projected Impact on Employment. This proposed regulatory change is unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed regulatory action is unlikely to have an effect on the use or value of private property in the Commonwealth.

Real Estate Development Costs. This proposed regulatory action 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. This regulatory action will likely not affect small businesses in the Commonwealth.

Alternative Method that Minimizes Adverse Impact. This regulatory action will likely not affect small businesses in the Commonwealth.

Adverse Impacts:

Businesses. This regulatory action will likely not affect small businesses in the Commonwealth.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of this proposed regulatory changes.

Other Entities. No other entities are likely to be adversely affected by this proposed change.

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

Summary:

The amendments (i) reorder the regulatory sections so that the requirements for solid waste planning units precede those for solid waste management plans and the requirement for planning units to maintain and update solid waste management plans is in its own section, (ii) clarify the difference between major and minor amendments to a solid waste management plan as well as other requirements of the regulation, and (iii) conform recycling rate credits to § 10.1-1411 C of the Code of Virginia.

9VAC20-130-10. Definitions.

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

~~"Agricultural waste" means all solid waste produced from farming operations.~~

"Board" means the Virginia Waste Management Board.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes~~, but is not limited to,~~ solid waste resulting from the operation of stores, markets, office buildings, restaurants, and shopping centers.

"Compost" means a stabilized organic product produced by ~~composting~~ a controlled aerobic decomposition process in such a manner that the product can be handled, stored, ~~and/or~~ or applied to the land without adversely affecting public health or the environment.

"Composting" means the manipulation of the natural process of decomposition of organic materials to increase the rate of decomposition.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include~~, but are not limited to,~~ lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos-containing material, any liquid, compressed gases, or semi-liquids and garbage are not construction wastes.

"Debris waste" means solid waste resulting from land clearing operations. Debris wastes include~~, but are not limited to,~~ stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means solid waste produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality or his designee. For purposes of submissions to the director as specified in the Waste Management Act, submissions may be made to the department.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"Facility" means solid waste management facility unless the context clearly indicates otherwise.

"Hazardous waste" means a "hazardous waste" as defined by the Virginia Hazardous Waste Management ~~Regulation~~ Regulations, 9VAC20-60.

"Incineration" means the controlled combustion of solid waste for disposal.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include~~, but is not limited to,~~ waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Institutional waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include regulated medical waste from health care facilities and research facilities that must be managed as a regulated medical waste.

"Integrated waste management plan" means a governmental plan that considers all elements of waste management during generation, collection, transportation, treatment, storage, disposal, and litter control and selects the appropriate methods of providing necessary control and services for effective and efficient management of all wastes. An "integrated waste management plan" must provide for source reduction, reuse and recycling within the jurisdiction and the proper funding and management of waste management programs.

"Jurisdiction" means a local governing body; city, county or town; or any independent entity, such as a federal or state agency, which join with local governing bodies to develop a waste management plan.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill (as these terms are defined in the Solid Waste Management Regulations (9VAC20-81).

"Litter" means all waste material disposable packages or containers, but not including the wastes of the primary processes of mining, logging, farming, or manufacturing.

"Market" ~~or "markets"~~ means interim or end destinations for the recyclable materials, including a materials recovery facility ~~(MRF)~~.

"Market conditions" means business and system related issues used to determine if materials can be targeted, collected, and delivered to an interim or end market in an efficient manner. Issues may include~~, but are not limited to:~~ the cost of collection, storage and preparation or both; the cost of transportation; accessible volumes of materials targeted for recycling; market value of materials targeted for collection/recycling; and distance to viable markets.

"Materials recovery facility ~~(MRF)~~" means, for the purpose of this regulation, a facility for the collection, processing, and marketing of recyclable materials including~~, but not limited to:~~ metal, paper, plastics, and glass.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves, and other clean wood waste that has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses, except composting as defined and regulated under the Solid Waste Management Regulations (9VAC20-81).

"Municipal solid waste" or "MSW" means waste that is normally composed of residential, commercial, and institutional solid waste and residues derived from the combustion of these wastes.

"Nonmunicipal solid waste material" means waste that is not normally composed of residential, commercial, and institutional solid waste and residues derived from the combustion of these wastes.

"Permit" means the written permission of the director to own, operate, or construct a solid waste management facility.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Principal recyclable materials" ~~(PRMs)~~ or "PRMs" means paper, metal, plastic, glass, commingled, yard waste, wood, textiles, tires, used oil, used oil filters, used antifreeze, batteries, electronics, or material as may be approved by the director. Commingled materials refers to single stream collections of recyclables where sorting is done at a materials recovery facility.

"Recycling" means the process of separating a given waste material from the waste stream and processing it so that it may be used again as a raw material for a product, which may or may not be similar to the original product. For the purpose of this chapter, recycling shall not include processes that only involve size reduction.

"Recycling residue" means the (i) nonmetallic substances, including ~~but not limited to~~ plastic, rubber, and insulation, which remain after a shredder has separated for purposes of recycling the ferrous and nonferrous metal from a motor vehicle, appliance, or other discarded metallic item and (ii) organic waste remaining after removal of metals, glass, plastics, and paper that are to be recycled as part of a resource recovery process for municipal solid waste resulting in the production of a refuse derived fuel.

"Regional boundary" means the boundary defining an area of land that will be a unit for the purpose of developing a waste management plan~~,~~ and is established in accordance with ~~9VAC20-130-180~~ 9VAC20-130-92 through ~~9VAC20-130-220~~ 9VAC20-130-100.

"Regulated medical waste" means solid wastes so defined by the Regulated Medical Waste Management Regulations (9VAC20-120) as promulgated by the Virginia Waste Management Board.

"Residential waste" means any waste material, including garbage, trash, and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas. Residential wastes do not include sanitary waste in septic tanks (septage)~~,~~ that is regulated by other state agencies.

"Resource recovery system" means a solid waste management system that provides for collection, separation, recycling, and recovery of energy or solid wastes, including disposal of nonrecoverable waste residues.

"Reuse" means the process of separating a given solid waste material from the waste stream and using it, without processing or changing its form, other than size reduction, for the same or another end use.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste, which is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

"Site" means all land and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste. (Note: This term includes all sites whether they are planned and managed facilities or open dumps.)

"Sludge" means any solid, semisolid, or liquid waste generated from a public, municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility.

"Solid waste" means any of those materials defined as "solid waste" in the Solid Waste Management Regulations (9VAC20-81).

"Solid waste management plan" means a plan submitted by a solid waste planning unit in accordance with the requirements of this chapter.

"Solid waste planning unit" means each region or locality that submits a solid waste management plan.

"Solid waste management facility ~~("SWMF")~~" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Source reduction" means any action that reduces or eliminates the generation of waste at the source, usually within a process. Source reduction measures include process modifications, feedstock substitutions, improvements in feedstock purity, improvements in housekeeping and management practices, increases in the efficiency of machinery, and recycling within a process. Source reduction minimizes the material that must be managed by waste disposal or nondisposal options by creating less waste. "Source reduction" is also called "waste prevention," "waste minimization," or "waste reduction."

"Source separation" means separation of recyclable materials by the waste generator of materials that are collected for use, reuse, reclamation, or recycling.

"Tons" means 2,000 pounds.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration, or resource recovery.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps. For more detail see the Solid Waste Management Regulations (9VAC20-81).

"Waste exchange" means any system to identify sources of wastes with potential for use, reuse, recycling, or reclamation and to facilitate its acquisition by persons who reuse, recycle, or reclaim it, with a provision for maintaining confidentiality of trade secrets.

~~"White goods" means any stoves, washers, hot water heaters or other large appliances. For the purposes of this chapter, this definition also includes, but is not limited to, such Freon-containing appliances as refrigerators, freezers, air conditioners, and dehumidifiers.~~

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter.

9VAC20-130-30. Policy.

It is the policy of the Virginia Waste Management Board to require each region designated pursuant to ~~9VAC20-130-180~~ 9VAC20-130-92 through ~~9VAC20-130-220~~ 9VAC20-130-100, as well as each city, county, and town not part of such a region, to develop comprehensive and integrated solid waste management plans that, at a minimum, consider and address all components of the following hierarchy:

1. Source reduction;
2. Reuse;
3. Recycling;
4. Resource recovery (waste-to-energy);
5. Incineration; and
6. Landfilling.

9VAC20-130-60. Applicability of regulations.

A. This chapter applies to all cities, counties, towns, designated solid waste planning units (under ~~9VAC20-130-180~~) 9VAC20-130-92), and permitted solid waste facilities within the solid waste planning unit, including those facilities covered under permit by rule procedures found in 9VAC20-81. Any city, county, and town may mutually agree to unite for the purpose of solid waste management planning, and

upon joint written notification to the ~~director,~~ department shall be deemed to be a solid waste planning unit for development of a solid waste management plan.

B. ~~Any cities~~ Cities, counties, and towns may be represented by a planning district, public service authority, or designated region that has been adopted under 9VAC20-130-90 B.

C. The plan may (subject to statutory authority) specify that all solid waste must be recycled at the rate established by the plan regardless of the point of origin of the solid waste. Solid wastes from both public and private sources shall be subject to such requirement.

9VAC20-130-92. Designation of solid waste planning units.

The director has been authorized by the Governor to designate regional boundaries defining areas and jurisdictions to be considered for joint development of solid waste management plans. Only those solid waste planning units meeting the standards established in this chapter will be considered. Any group of jurisdictions may petition the director for designation as a solid waste planning unit, and if the proposed region meets the standards established for designation, the director shall approve the request.

9VAC20-130-94. Considerations in designating solid waste unit boundaries.

A. The following shall be considered in designating solid waste planning unit boundaries:

1. Geographic areas or jurisdictions that have a history of cooperating to solve problems in environmental or other related matters;

2. Existing regional management systems, authorities, or similar institutions;

3. The size, configuration, and location of the regional areas should have sufficient solid waste contribution and market availability to support the solid waste management system;

4. Solid waste types within areas and mutuality of solid waste management interests;

5. Geologic, hydrologic, soil, and groundwater conditions; availability of land and soils; and natural barriers and ecosystems; and

6. Existing planning areas established for purposes other than solid waste management including the existence of informational databases containing data related to that needed for solid waste management planning and recycling.

B. Areas included within a solid waste planning unit's boundaries may be local or regional.

1. A local area may include a city, town, or county and any towns within the county that through mutual agreement join with the county for the purpose of developing a plan.

2. A regional area may include:

a. The jurisdictions with existing regional planning district boundaries;

b. Any combination of local governments formally joined to form a region or service authority; or

c. Existing waste management or public service authorities.

9VAC20-130-96. Criteria for designating a solid waste planning unit.

A. The director may authorize an official committee or public body as authorized to develop, adopt, and promulgate the solid waste management plan.

B. Prospective solid waste planning units shall have:

1. Demonstrated ability to plan, manage, or operate solid waste management and recycling services; or

2. Completed planning that resulted in successful implementation of solid waste management and recycling facilities or services.

C. An entity designated as responsible for developing a solid waste management plan shall:

1. Be an organization that represents the executive boards of jurisdictions within the solid waste planning unit;

2. Have planning authority for the regional area;

3. Be capable of readily starting the plan development work tasks;

4. Have an established methodology for resolving conflicts, making planning decisions, and providing public participation in the development of the plan;

5. Have experience in environmental planning and have a staff experienced in the work tasks involved in such planning;

6. Have established a methodology and authority sufficient to implement the plan once it is complete and approved; and

7. Have access to informational resources within the region.

9VAC20-130-98. Development of designated solid waste planning units.

A. At least 14 days prior to designating a regional boundary for solid waste management planning, the department shall place a notice of the proposed regional boundary and an opportunity to comment in the Virginia Register of

Regulations and in a newspaper of general circulation within the proposed solid waste planning unit.

B. If as a result of the notices required by subsection A of this section, the director finds a need exists to hold a public hearing on the issues, a public hearing shall be held in the proposed region prior to the designation. At least 14 days prior to the public hearing, a notice of the public hearing shall appear in the same publications as the notice under subsection A of this section.

9VAC20-130-100. ~~[Reserved]~~ Amendment of solid waste planning unit boundaries.

The director may amend a solid waste planning unit's boundary based on an application from the governing body of the solid waste planning unit. Along with the application, each locality (within the original region and any locality being added) must submit a letter acknowledging the change in the boundary. Once the director amends a solid waste planning unit's boundary, the solid waste planning unit must amend the solid waste management plan as required by 9VAC20-130-175. Any locality that withdraws membership from a regional solid waste planning unit must become a member of an existing solid waste planning unit or develop and submit a solid waste management plan for approval as specified in 9VAC20-130-110.

9VAC20-130-110. Schedule for plan development.

A. Each solid waste planning unit in the Commonwealth shall develop and maintain a solid waste management plan or amend an existing solid waste management plan and submit it for approval in accordance with this chapter. Existing plans may be amended by addendum of items such as consideration of the waste management hierarchy, the recycling program implementation activities, and other requirements of this chapter that are not a part of the existing plan. Details concerning amendments to solid waste management plans are found in 9VAC20-130-175.

B. The department shall review and approve or return comments on the deficiencies in each plan submitted in accordance with ~~9VAC20-130-110~~ subsection A of this section no later than 90 days from the date the plans are received. In the event the department is unable to complete its review within 90 days, the applicant will be notified and given a date as to when the review will be completed.

C. Each submitter who receives comments on its solid waste management plan under subsection B of this section shall submit a revised solid waste management plan to the department no later than 90 days following receipt of notification of deficiencies.

D. Plans approved without alteration shall become effective upon notification of such approval by the department. If after review of the corrected plan submitted pursuant to subsection C of this section, the department cannot approve the corrected solid waste management plan because the department finds the plan not to be in accordance with this chapter, it will issue a notice of intent to disapprove to the submitter. The notice of intent to disapprove shall set forth (i) the reason for the disapproval, (ii) what is required for approval, (iii) the right of the submitter to an informal fact-finding proceeding under Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia, and (iv) allow the development of an action plan for the solid waste planning unit as set forth in ~~this chapter at~~ 9VAC20-130-120 I. The department will give priority consideration for review of corrected plans where the solid waste planning unit has a pending permit application for a solid waste management facility.

E. The director may revoke the approval of any plan or require its revision and resubmittal if there is evidence that there has been significant deviation from the plan. Significant deviations are departures or omissions from activities planned in accordance with 9VAC20-130-120. The ~~department~~ director will issue a notice of intent to revoke or require revision and resubmittal of a plan. The notice of intent shall set forth (i) whether the ~~department~~ director intends to revoke or require revision and resubmittal of the plan, (ii) the reason the ~~department~~ director intends to take the action, and (iii) the right of the submitter of the plan to an informal fact-finding proceeding under Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

9VAC20-130-120. Planning requirements.

A. Basic planning elements:

1. Objectives for solid waste management within the planning unit;

2. A discussion as to how the plan will be implemented and tracked, consisting of an integrated waste management strategy to support and promote the hierarchy set forth at 9VAC20-130-30; and giving preference to alternatives in the following order of priority: source reduction, reuse, recycling, resource recovery, incineration, and landfilling;

3. Definition of incremental stages of progress toward the objectives and schedule for their implementation, including, for compliance with 9VAC20-81-450, specific solid waste management facility names, facility capacities, and life based on 20-year need;

4. Strategy for the provision of necessary funds and resources;

5. Descriptions of the funding and resources necessary, including consideration of fees dedicated to future facility development;

6. Strategy for public education and information on source reduction, reuse, and recycling; and

7. Consideration of public and private sector partnerships and private sector participation in execution of the plan.

Existing private sector recycling operations should be incorporated in the plan, and the expansion of such operations should be encouraged.

B. A minimum recycling rate as specified in § 10.1-1411 of the Code of Virginia for total municipal solid waste generated annually in each solid waste planning unit shall be met and maintained.

1. The plan shall describe how the minimum recycling rate shall be met or exceeded. The ~~department~~ director may approve the solid waste management plans of units that do not currently meet the minimum recycling rate only if all other requirements of ~~these regulations~~ this chapter have been met and the solid waste planning unit demonstrates its commitment to implementing a strong and detailed action plan for recycling to meet the required rate.

2. When a solid waste planning unit's annual recycling rate falls below the minimum rate, it shall constitute evidence of a significant deviation from the plan. The plan may be subject to revocation by the department under 9VAC20-130-110 E unless the solid waste planning unit submits a recycling action plan acceptable to the department per subsection I of this section.

C. The solid waste management plan shall include data and analyses of the following ~~type(s)~~ type for each jurisdiction. Each item ~~below~~ listed in this subsection shall be in a separate section and labeled as to content:

1. Population information and projections for 20 years of population growth and development patterns;

2. Urban concentrations, geographic conditions, economic growth and development, markets for the reuse and recycling of materials, transportation conditions, and related factors;

3. Estimates of solid waste generation from residential, commercial institutional, industrial, construction, demolition, debris and other types of sources, including the amounts reused, recycled, recovered as a resource, incinerated, and landfilled. Entities engaged in the collection, processing, and marketing of recyclable materials should provide data for incorporation into the recycling rate calculation~~,~~ when requested by the planning unit.

4. A listing of existing and planned solid waste collection, storage, treatment, transportation, disposal, and other management facilities, their projected capacities, expected life, and systems for their use;

5. All milestones in the implementation of the solid waste management plan over the 20-year projection and the parties responsible for each milestone;

6. A description of programs for solid waste reduction, reuse, recycling, resource recovery, incineration, storage, treatment, disposal, and litter control;

7. A description of outreach programs for waste exchange, public education, and public participation;

8. The procedures for and results of evaluating solid waste collection, including transfer stations; and

9. The assessment of all current and predicted needs for solid waste management for a period of 20 years and a description of the action to be taken to meet those needs.

D. All known solid waste disposal sites, closed, inactive, and active, within the area of the solid waste management plan shall be documented and recorded at a centralized archive authorized to receive and record information and a copy shall be sent to the department. All new sites shall be recorded at the same central data source.

E. A methodology shall be utilized to monitor the amount of solid waste of each type produced within the area of the solid waste management plan and to record the annual production by solid waste types at a centralized archive and a copy shall be sent to the department.

F. The solid waste management plan shall include, when developed locally, a copy of the local governing body's resolution adopting the solid waste management plan.

G. ~~The~~ When the solid waste management plan is developed regionally, the solid waste management plan shall include~~, when developed regionally,~~ a copy of the resolution of the solid waste planning unit approving the plan adopted in accordance with the ~~Virginia Area Development~~ Regional Cooperation Act, the Virginia Water and Waste Authorities Act, the provisions of the Code of Virginia governing joint exercise of powers by political subdivisions (§ 15.2-1300 of the Code of Virginia), or other authority as applicable. The plan shall specify the solid waste planning unit's legal authority to adopt the solid waste management plan.

H. The solid waste management plan shall clearly and explicitly demonstrate the manner in which the goals of the planning requirements in ~~these regulations~~ this chapter shall be accomplished and actions to take if these requirements are not met.

I. A planning unit that does not meet the requirements of these regulations shall submit an action plan, by mail or electronic mail, for approval by the department. Such action plans shall include:

1. A description of the deficiency that requires the development of the action plan.

2. A time schedule to resolve the ~~deficiency(ies)~~ deficiency associated with the planning unit's failure to meet the requirements of the approved solid waste management plan.

3. A reporting requirement to the department~~,~~ of a minimum of once every six months, including activities or updates documenting how the action plan requirements are being met.

4. Plans and all subsequent reports and submittals shall be reviewed by the department within 30 days of receipt by the department.

5. All the department's requests for further information or ~~response(s)~~ responses shall be provided within 30 days of receipt at the planning unit. The department may grant reasonable extensions to these deadlines on a case-by-case basis.

9VAC20-130-125. Recycling requirements.

A. Each solid waste planning unit shall maintain a minimum recycling rate for municipal solid waste generated within the solid waste planning unit pursuant to the following schedule:

1. Except as provided in subdivision 2 of this subsection, each solid waste planning unit shall maintain a minimum 25% recycling rate; or

2. Each solid waste planning unit shall maintain a minimum 15% recycling rate if it has (i) a population density rate of less than 100 persons per square mile according to the most recent United States Census~~,~~ or (ii) a not seasonally adjusted civilian unemployment rate for the immediately preceding calendar year that is at least 50% greater than the state average as reported by the Virginia Employment Commission for such year.

~~B. The minimum recycling rate shall be determined by the following formula:~~

~~Recycling Rate = [PRMs recycled] ÷ [MSW generated] + [all Credits in C]~~

~~Where:~~

~~PRMs recycled equals the amount of principal recyclable materials received for recycling each calendar year; and~~

~~MSW generated equals the sum of PRMs recycled and MSW disposed. (MSW disposed equals the amount of MSW delivered to landfills, transfer stations, incineration and waste-to-energy facilities)~~

~~The amounts shall be expressed in tons using one of the methods below:~~

~~1. The actual weight of each component in tons; or~~

~~2. The volume of each component, converted to weight in tons (conversion chart in Form DEQ 50-30).~~

~~C.~~ B. Credits may be added to the recycling formula in subsection ~~B~~ C of this section provided that the aggregate of all such credits shall not exceed five percentage points of the annual municipal solid waste recycling rate achieved for each solid waste planning unit:

1. A credit of ~~one ton for each ton of any nonmunicipal solid waste material that is recycled;~~ two percentage points of the minimum recycling rate mandated for the solid waste planning unit for a source reduction program (SRP) that is implemented within the solid waste planning unit. The existence and operation of such a program shall be certified by the solid waste planning unit;

2. A credit of one ton for each ton of ~~any solid waste material that is reused;~~ recycling residue generated in Virginia and deposited in a landfill permitted under § 10.1-1408.1 of the Code of Virginia;

3. A credit of one ton for each ton of ~~recycling residue generated in Virginia and deposited in a landfill permitted under § 10.1-1408.1 of the Code of Virginia;~~ any nonmunicipal solid waste material that is recycled; and

4. A credit of ~~two percentage points of the minimum recycling rate mandated for the solid waste planning unit for a source reduction program that is implemented within the solid waste planning unit. The existence and operation of such a program shall be certified by the solid waste planning unit; and~~ one ton for each ton of any solid waste material that is reused.

~~5. A credit of one ton for each inoperable vehicle for which a locality receives reimbursement from the Virginia Department of Motor Vehicles under § 46.2-1407 of the Code of Virginia.~~

C. Recycling rates shall be expressed in tons using the actual weight of the component or the volume of each component, converted to weight in tons using the conversion chart in Form DEQ 50-30.

EDITOR'S NOTE: The equations in subdivision 1 of this subsection are new text.

1. Recycling rates shall be calculated using the following formulas:

$$B = \frac{P}{M} \times 100$$

$$A = \frac{P + C}{M + C} \times 100$$

$$S = B + 2\% \text{ or } S = A + 2\%$$

Where:

A = adjusted recycling rate

B = base recycling rate

C = the total tons that may be added to the recycling formula as allowed by subdivisions B 2, B 3, and B 4 of this section

M = the sum of PRMs recycled and MSW disposed in the calendar year. (MSW disposed equals the amount of MSW delivered to landfills, transfer stations, incineration, and waste-to-energy facilities.)

P = the amount of PRMs received for recycling in the calendar year

S = base or adjusted recycling rate with SRP credit

In cases where the solid waste planning unit cannot obtain actual and accurate information from solid waste management facilities, a solid waste planning unit may request the department to allow the use of an alternative method to calculate MSW disposed for the purposes of calculating the recycling rate.

2. Annual municipal solid waste recycling rate. The annual municipal solid waste recycling rate is either the base recycling rate, adjusted recycling rate, base recycling rate with SRP credit, or the adjusted recycling rate with SRP credit, whichever is higher; however, if the annual municipal solid waste recycling rate exceeds the base recycling rate by more than five percentage points, the annual municipal solid waste recycling rate shall be the base recycling rate plus five percentage points.

D. Yard wastes and vegetative wastes are deemed to be recycled if they are composted or mulched and the finished mulch or compost is marketed or otherwise used productively. Tires are deemed to be recycled if they are beneficially used in a method consistent with the waste tire program operated by the department. Used oil, oil filters, and antifreeze are deemed to be recycled if they are marketed or otherwise used productively.

9VAC20-130-173. Maintenance of solid waste management plans.

A. Solid waste management planning units are required to maintain current solid waste management plans containing a 20-year planning window.

B. On or before each five-year anniversary of the department's plan approval date, the planning unit shall submit a letter to the department, by mail or electronic mail, certifying that the following plan elements listed in 9VAC20-130-120 C have been maintained and updated:

1. Waste generation estimates are current (9VAC20-130-120 C 3);

2. The schedule increments have been met (9VAC20-130-120 C 5); and

3. A projected 20-year waste management capacity remains available or projects otherwise are on schedule to meet the planning unit's solid waste needs (9VAC20-130-120 C 9).

C. The letter of certification submitted in accordance with subsection B of this section shall be used in the department's assessment of whether any plan amendments are necessary and to ensure compliance with 9VAC20-130-110 E.

D. If revisions to the plan are needed, solid waste management planning units shall amend the plan as described in 9VAC20-130-175.

9VAC20-130-175. Amendments to plans.

A. Amendments to the plans shall be classified as major or minor~~. These classifications are~~ as described in this section ~~below~~.

B. Major amendments.

1. Major amendments shall include:

a. Any addition, deletion, or cessation of operation of any solid waste disposal facility;

b. Any increase in landfill capacity;

c. Any change that moves toward implementation of a waste management strategy that is lower in the waste management hierarchy;

d. Action ~~plan(s)~~ plans, including an action plan to address a planning unit's recycling rate that has fallen below the statutory minimum; or

e. Any change to membership in the approved area. Director approval of changes to planning unit boundaries, as described in 9VAC20-130-100, shall occur prior to submission of solid waste plan amendments to revise plan membership.

~~2. Minor amendments shall include:~~

~~a. Any addition, deletion, or cessation of operation of any facility that is not a solid waste disposal facility;~~

~~b. Any change that moves toward implementation of a waste management strategy that is higher in the waste management hierarchy; or~~

~~c. Any nonsubstantive administrative change such as a change in name.~~

~~3. Minor amendments shall be submitted, by mail or electronic mail, directly to the department for notation. The planning units are the repository for the minor amendments to the plans.~~

~~B.~~ 2. Major amendments shall require the same public participation as detailed in 9VAC20-130-130 B before being submitted, by mail or electronic mail, to the department for approval prior to implementation.

~~C.~~ 3. The department shall review major amendments and approve or return comments on any deficiencies no later than 90 days from the date the amendments are received. In the event the department is unable to complete its

review within 90 days, the applicant will be notified and given a date as to when the review will be completed. No department approval shall be necessary for minor amendments.

~~D.~~ 4. Each submitter who receives comments on his major plan amendment under ~~subsection C~~ subdivision B 3 of this section shall submit a corrected amendment to the department no later than 90 days following notification of deficiencies.

~~E.~~ 5. Major amendments approved without alteration shall become effective upon notification. If after review of the corrected amendment submitted pursuant to ~~subsection D~~ subdivision B 4 of this section, the department cannot approve the corrected amendment because it finds the amendment not to be in accordance with this chapter, it will issue a notice of intent to disapprove to the submitter. The notice of intent to disapprove shall set forth (i) the reason for the disapproval, (ii) what is required for approval, and (iii) the right of the submitter to an informal fact-finding proceeding under Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia. The department will give priority consideration for review of corrected amendments when the planning unit has a pending permit application for a solid waste management facility.

~~F. Solid waste management planning units are required to maintain current plans. On or before each five year anniversary of the department's plan approval date, the planning unit shall submit a letter to the department, by mail or electronic mail, certifying that the following plan elements, listed in 9VAC20-130-120 C, have been maintained and updated: waste generation estimates are current, the schedule increments have been met, and a projected 20 year waste management capacity remains available or projects otherwise are on schedule to meet the unit's solid waste needs. The letter of certification will be used in the department's assessment of whether any plan amendments are necessary and to ensure compliance with 9VAC20-130-110 E.~~

C. Minor amendments.

1. Minor amendments shall include:

a. Any addition, deletion, or cessation of operation of any facility that is not a solid waste disposal facility;

b. Any change that moves toward implementation of a waste management strategy that is higher in the waste management hierarchy; or

c. Any nonsubstantive administrative change such as a change in name.

2. Minor amendments shall be submitted, by mail or electronic mail, directly to the department for notation. The planning units are the repository for the minor amendments to the plans.

9VAC20-130-180. ~~Designation of solid waste planning units.~~ (Repealed.)

~~The director has been authorized by the Governor to designate regional boundaries defining areas and jurisdictions to be considered for joint development of solid waste management plans. Only those solid waste planning units meeting the standards established in this chapter will be considered. Any group of jurisdictions may petition the director for designation as a solid waste planning unit, and, if the proposed region meets the standards established for designation, the director shall approve the request.~~

9VAC20-130-190. ~~Development of designated solid waste planning units.~~ (Repealed.)

~~A. At least 14 days prior to designating a regional boundary for solid waste management planning, the director shall place a notice of the proposed regional boundary and an opportunity to comment in the Virginia Register of Regulations and in a newspaper of general circulation within the proposed solid waste planning unit.~~

~~B. If, as a result of the notices required by subsection A of this section, the director feels a significant need exists to hold a public hearing on the issues, a public hearing shall be held in the proposed region prior to the designation. At least 14 days prior to the public hearing, a notice of the proposed public hearing shall appear in the same publications as the notice under subsection A of this section.~~

9VAC20-130-200. ~~Considerations in designating solid waste planning unit boundaries.~~ (Repealed.)

~~A. The following shall be considered in designating solid waste planning unit boundaries:~~

~~1. Geographic areas or jurisdictions which have a history of cooperating to solve problems in environmental or other related matters;~~

~~2. Existing regional management systems, authorities or similar institutions;~~

~~3. The size, configuration and location of the regional areas should have sufficient solid waste contribution and market availability to support the solid waste management system;~~

~~4. Solid waste types within areas and mutuality of solid waste management interests;~~

~~5. Geologic, hydrologic, soil and groundwater conditions; availability of land and soils; and natural barriers and ecosystems; and~~

~~6. Existing planning areas established for purposes other than solid waste management including the existence of informational databases containing data related to that needed for solid waste management planning and recycling.~~

~~B. Areas included within a solid waste planning unit's boundaries may be local or regional.~~

~~1. A local area may include a city, town or county and any towns within the county that through mutual agreement join with the county for the purpose of developing a plan.~~

~~2. A regional area may include:~~

~~a. The jurisdictions with existing regional planning district boundaries;~~

~~b. Any combination of local governments formally joined to form a region or service authority; or~~

~~c. Existing waste management or public service authorities.~~

9VAC20-130-210. ~~Criteria for designating a solid waste planning unit.~~ (Repealed.)

~~A. The director may authorize an official committee or public body as authorized to develop, adopt and promulgate the solid waste management plan.~~

~~B. Prospective solid waste planning units shall have:~~

~~1. Demonstrated ability to plan, manage or operate solid waste management and recycling services; or~~

~~2. Completed planning that resulted in successful implementation of solid waste management and recycling facilities or services.~~

~~C. An entity designated as responsible for developing a solid waste management plan shall:~~

~~1. Be an organization that represents the executive boards of jurisdictions within the solid waste planning unit;~~

~~2. Have planning authority for the regional area;~~

~~3. Be capable of readily starting the plan development work tasks;~~

~~4. Have an established methodology for resolving conflicts, making planning decisions and providing public participation in the development of the plan;~~

~~5. Have experience in environmental planning and have a staff experienced in the work tasks involved in such planning;~~

~~6. Have established a methodology and authority sufficient to implement the plan once it is complete and approved; and~~

~~7. Have access to informational resources within the region.~~

9VAC20-130-220. ~~Amendment of solid waste planning unit boundaries.~~ (Repealed.)

~~The director may amend a solid waste planning unit's boundary based on an application from the governing body or bodies of the solid waste planning unit. Along with the application, each locality (within the original region and any locality being added) must submit a letter acknowledging the change in the boundary.~~

9VAC20-130-230. Petitioning for variance or exemption.

A. Any person regulated by this chapter may petition the director to grant a variance or an exemption from any requirement of this chapter subject to the provisions of this section. Any petition submitted to the department is also subject to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

B. The director may grant the variance or an exemption provided the applicant demonstrates to the satisfaction of the director that~~: 1. The~~ the solid waste planning unit has demonstrated that it has made a good faith effort to comply with the minimum recycling rates and with the requirements of this chapter before that unit petitioned for a variance~~;~~ and:

~~2. (i)~~ 1. If the minimum recycling rate is addressed in the petition, and strict application of the minimum recycling rates will result in undue hardship as a result of the solid waste planning unit's particular market conditions that are beyond the planning unit's control; or ~~(ii) if~~

2. If the recycling rate is not addressed in the petition ~~and~~, granting the variance will not have an adverse impact on the integrity of the overall solid waste management plan.

C. The petition shall be submitted to the department by certified mail and shall include:

1. The petitioner's name and address;

2. A statement of petitioner's interest in the proposed action;

3. A description of desired action and a citation of the regulation from which a variance is requested;

4. A description of need and justification for the proposed action, including impacts from existing operations and market conditions (if the planning unit chooses to petition for subdivision B ~~2 (i)~~ 1 of this section);

5. The duration of the variance, if applicable;

6. Other information believed by the applicant to be pertinent; and

7. The following statement signed by the petitioner or authorized representative:

"I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

D. Petition processing and resolution.

1. In the case of a denial, the petitioner's procedural rights are outlined in Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

2. If the director grants a variance request, the notice to the petitioner shall provide that the variance may be terminated upon a finding by the director that the petitioner has failed to comply with any variance requirements.

~~DOCUMENTS INCORPORATED BY REFERENCE (9VAC20-130)~~

~~Paint Filter Liquids Test, Method 9095, USEPA Publication SW-846.~~

VA.R. Doc. No. R19-4196; Filed November 28, 2018, 9:51 a.m.

STATE WATER CONTROL BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-740. Water Reclamation and Reuse Regulation.**

Contact Information: Debra Harris, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, or email debra.harris@deq.virginia.gov.

FORMS (9VAC25-740)

Application for an Emergency Authorization to Produce, Distribute or Reuse Reclaimed Water (12/2015)

Application for Reclaimed Water Hauling Operations, DEQ Form WR&R-2 (eff. 10/2018)

~~Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit or a Virginia Pollution Abatement Permit (1/2014)~~

Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit or a Virginia Pollution Abatement Permit, DEQ Form WR&R-1 (rev. 11/2018)

Water Reclamation and Reuse Variance Application (12/2015)

VA.R. Doc. No. R19-5672; Filed November 27, 2018, 1:37 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Extension of Emergency Regulation

Titles of Regulations: **12VAC30-10. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-540).**

12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130).

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-5, 12VAC30-60-50, 12VAC30-60-61).

12VAC30-130. Amount, Duration, and Scope of Selected Services (amending 12VAC30-130-3000; repealing 12VAC30-130-850 through 12VAC30-130-890, 12VAC30-130-3020).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Expiration Date Extended Through: June 30, 2019.

The Governor approved the request of the Department of Medical Assistance Services (DMAS) to extend this emergency regulation for six months as provided in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency action will continue in effect through June 30, 2019. The emergency regulation was published in 33:13 VA.R. 1436-1469 February 20, 2017. The emergency regulations clarify policy interpretations that revise program standards to allow for more evidence-based service delivery, allow DMAS to implement more effective utilization management in collaboration with the behavioral health service administrator, enhance individualized coordination of care, implement standardized coordination of individualized aftercare resources by ensuring access to medical and behavioral health service providers in the individual's home community, and support DMAS audit practices.

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

VA.R. Doc. No. R17-4495; Filed December 12, 2018, 2:45 p.m.

Fast-Track Regulation

Title of Regulation: **12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (adding 12VAC30-60-361; repealing 12VAC30-60-360).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 23, 2019.

Effective Date: February 7, 2019.

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

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

Purpose: This regulatory action permits DMAS to replace the current Level of Functioning (LOF) survey instrument with the more current Virginia Individual Developmental Disability Eligibility Survey (VIDES) assessment. The purpose of this action is to implement the same screening standard to be applied to individuals for admission to an intermediate care facility for individuals with intellectual disability as is being used for screening such individuals for home and community based developmental disability waiver services. Using the same screening standard for all individuals, regardless of whether they seek institutional care or community care, ensures the uniformity and consistency of evaluation and treatment to protect the health and welfare of these vulnerable citizens.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a noncontroversial fast-track rulemaking action since the use of the VIDES assessment instrument for waiver services, under the authority of a current emergency regulation, has been well received by the affected provider and citizen communities.

Substance: The section of the State Plan for Medical Assistance that is affected by this action is Standards Established and Methods Used to Assure High Quality of Care: Criteria for care in facilities for mentally retarded persons (12VAC30-60-360).

Current Policy: This section of the State Plan for Medical Assistance was implemented after the 1987 Omnibus Budget Reconciliation Act required that states specify standards for a level of functioning that individuals were required to meet for Medicaid to reimburse for intermediate care facilities for the mentally retarded (ICF/MR) services. With the exception of specifying that the Level of Functioning (LOF) survey also applied to individuals seeking waiver services in their communities, this section of the State Plan has not been substantially revised since it was originally promulgated.

The LOF survey assessed individuals in the following areas:

(i) Health status, as in medication administration, seizure control, handling diagnoses for disease control and care, direct service care for lesions or wound dressings, motor disabilities that interfere with activities of daily living, and nutritional issues (e.g., undernourishment, swallowing problems, obesity).

(ii) Communication, as in how often does the individual indicate wants by pointing or vocalization, use simple words or phrases, understand simple words or phrases, identify at least 10 things using the appropriate word, or speak in an understandable manner.

(iii) Task learning skills, as in paying attention to purposeful activities for five minutes, staying with a three-step task, telling time to the hour and understanding time intervals, counting more than 10 objects, writing or printing 10 words, or naming people or objects.

(iv) Personal or self-care, as in performing activities of daily living (e.g., eating, toileting, bathing, dressing).

(v) Mobility, as in moving around the environment, rising from sitting or lying down positions, and turning or repositioning in bed.

(vi) Behavior, as in engaging in self-destructive behavior, threatening physical harm to others, throwing things, damaging property, or responding in socially unacceptable manners.

(vii) Community living skills, as in preparing simple foods, caring for personal belongings and living space, performing laundry functions, counting money, using the telephone, being in the community without wandering off, and refraining from exhibiting unacceptable sexual behaviors in public.

The individual's level of functioning in each category indicate his areas of dependency. In some categories, dependency is rated by the degree of assistance required by the individual. In other categories, dependency is established by the frequency of a particular behavior or the individual's ability to perform a given task.

The formal name for ICF/MR institutions was changed by the U.S. Department of Health and Human Services Health Care

Financing Administration (the Medicaid federal funding agency that preceded the current Centers for Medicare and Medicaid Services), to intermediate care facilities for individuals with intellectual disability (ICF/IID).

Recommendations: Beginning in 2013, DMAS, in collaboration with the Department of Behavioral Health and Developmental Services (DBHDS), began a major overhaul of its waiver programs for intellectually and developmentally disabled citizens, partially in response to the Department of Justice (DOJ) Settlement (court approved in 2012). These waivered programs were originally called the Individuals and Families with Developmental Disabilities (DD), the Intellectual Disabilities Waiver (ID), and the Day Support Waiver (DS). The DD waiver is being replaced with the Family and Individual Supports (FIS) waiver; the ID waiver is being replaced with the Community Living (CL) waiver; and the DS waiver is being replaced with the Building Independence (BI) waiver.

During the course of revamping these three waivers, DMAS and DBHDS replaced the outdated Level of Functioning (LOF) survey with the Virginia Individual Developmental Disability Eligibility Survey (VIDES). Adopting the use of the VIDES standards for individuals seeking institutional care in ICF/IIDs, as set out in this regulatory action, restores consistency to the standards applied to such individuals regardless of whether services are to be received in communities or institutions. The result will be that all such affected individuals will be evaluated by the same criteria.

In addition to the change in the survey tool, a new single point of referral for the screening process has been added to address concerns from the DOJ Settlement Agreement about consistency in screening and availability of community options.

The Virginia Individual Developmental Disabilities Eligibility Survey (VIDES) has three age-appropriate versions: VIDES for infants (children up to three years of age), VIDES for children (ages three through 18), and VIDES for adults (individuals 18 years of age and older).

The adult form assesses an individual's abilities, for example, in these areas:

(i) Health status, as in how often does the individual require support for medication administration, monitoring of seizures, or learning a prescribed regimen for a diagnosed chronic health care condition.

(ii) Communication, as in how often does the individual effectively share information, effectively communicate wants or needs; use at least simple words, phrases, or short sentences; ask for things using appropriate names; engage in purposeful activities; complete a multi-step task without reminders; or count more than 10 objects.

(iii) Task learning, as in how often does the individual engage in purposeful activities for at least five minutes, complete a multi-step task without reminders, tell time to the hour and understand time intervals, or count more than 10 objects.

(iv) Personal or self-care, as in with what type of assistance can the individual perform personal hygiene tasks, perform dining or eating functions, perform bathing or showering functions, and perform grooming tasks.

(v) Motor skills, as in with what type of assistance can the individual move safely about his environment, safely get in and out of bed, and demonstrate fine motor control or eye-hand coordination.

(vi) Behavior, as in how often does this individual engage in behavior that results in harm or injury to himself, demonstrate aggressive or threatening behavior toward other persons, engage in property destruction, or respond to others in a socially inappropriate manner.

(vii) Community living skills, as in with what type of assistance is the individual able to prepare simple foods, perform housecleaning and laundry tasks, identify and calculate the value of money, use the telephone, recognize and respond appropriately to dangerous situations, and remain safely in the community without wandering off.

(viii) Self direction skills, as in making and implementing daily personal decisions regarding daily schedule and time management; making and implementing major life decisions such as choice and type of living arrangements; demonstrating adequate social skills to establish or maintain interpersonal relationships; demonstrating the ability to cope with fears, anxieties, or frustrations; demonstrating the ability to manage personal finances; or demonstrating ability to protect self from exploitation.

The primary difference between the old LOF and the new VIDES is the addition of the self-direction section. This addition has resulted from recent federal emphasis on providing for and encouraging person-centered planning, activities, and program focus. Agencies that are charged with serving these individuals are now required to promote an individual's participation in developing that individual's own plan of care that must incorporate the individual's goals and objectives for life.

Issues: The advantages to the public and the Commonwealth are that consistent, person-centered functional standards will be applied to individuals who obtain care in their communities or in ICF/IID institutions. There are no disadvantages to the public or the Commonwealth in this action. Private businesses will only be affected to the degree that they are privately operated ICF/IIDs.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medical Assistance Services proposes to replace the current Level of Functioning (LOF) survey standards with the new Virginia Individual Developmental Disabilities Eligibility Survey (VIDES) standards for individuals seeking care in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs).

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

Estimated Economic Impact. The LOF survey has been a screening tool used to determine the level of care eligibility for certain mental health services since 1987. It assesses individuals in areas such as health status, communication, task learning, personal/self-care, mobility, behavior, and community living skills. Beginning in 2013, the Department of Medical Assistance Services (DMAS) in collaboration with the Department of Behavioral Health and Developmental Services (DBHDS), began a major overhaul of its waiver programs for intellectually and developmentally disabled citizens.

During the course of revamping the waiver programs that provided services in community settings,[1] DMAS and DBHDS replaced the outdated LOF survey with the Virginia Individual Developmental Disability Eligibility Survey (VIDES). The new VIDES survey assesses individuals in the same areas as the LOF survey but also includes an additional assessment on self-direction skills. Self-direction skills include making and implementing daily personal decisions regarding daily schedule and time management; making and implementing major life decisions such as choice and type of living arrangements; demonstrating adequate social skills to establish/maintain interpersonal relationships; demonstrating the ability to cope with fears, anxieties, or frustrations; demonstrating the ability to manage personal finances; and demonstrating ability to protect self from exploitation.

The added focus on self-direction has resulted from a recent federal emphasis on providing for and encouraging person-centered planning, activities, and program focus following the 1999 United States Supreme Court decision in Olmstead v. L.C., which requires that individuals with disabilities be served in the most integrated settings that are possible for their particular circumstances.[2] Agencies that are charged with serving these individuals are now required to promote individuals' participation in developing their own plans of care that must incorporate the individuals' goals and objectives for their lives.

Adopting the use of the VIDES standards for individuals seeking institutional care in ICF/IIDs restores consistency to the standards applied to such individuals regardless of whether services are to be received in communities or institutions. The expected result is that all such affected individuals will be evaluated by the same updated criteria as before the implementation of the new waiver designs.

DMAS does not expect the change in the survey to affect the number of individuals placed in ICF/IIDs. Thus, the proposed adoption of the VIDES survey should not create any significant financial impact on the Commonwealth. To the extent the new survey accommodates self-direction and updates screening standards with modern criteria, the proposed regulation should create a net benefit.

Businesses and Entities Affected. There are approximately 57 ICF/IIDs enrolled with DMAS. Some of these may be small businesses. These facilities have approximately 530-bed capacity.

Localities Particularly Affected. The proposed changes do not disproportionately affect any locality more than others.

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. The proposed regulation does not impose costs and other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. There is no adverse impact on 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]These waivered programs were originally called the Individuals and Families with Developmental Disabilities (DD), the Intellectual Disabilities Waiver (ID), and the Day Support Waiver (DS). The DD waiver is being replaced with the Family and Individual Supports (FIS) waiver; the ID waiver is being replaced with the Community Living (CL) waiver; and the DS waiver is being replaced with the Building Independence (BI) waiver.

[2]527 U.S. 581 (1999).

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

This regulatory action replaces the current Level of Functioning Survey standards with the Virginia Individual Developmental Disabilities Eligibility Survey (VIDES) standards for individuals seeking care in intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs). The Commonwealth has recently adopted the VIDES standards for the comparable level of functioning for waiver services in communities. By using the VIDES standards for institutional care in this action, the Commonwealth is restoring the consistency of functional standards for individuals regardless of whether they obtain their care in their communities or in ICF/IID institutions.

12VAC30-60-360. ~~Criteria for care in facilities for mentally retarded persons.~~ (Repealed.)

~~§ 4.0 Definitions. The following words and terms, when used in these criteria, shall have the following meaning, unless the context clearly indicated otherwise:~~

~~"no assistance" shall mean no help is needed.~~

~~"prompting/structuring" shall mean prior to the functioning, some verbal direction and/or some rearrangement of the environment is needed.~~

~~"supervision" shall mean that a helper must be present during the function and provide only verbal direction, general prompts, and/or guidance.~~

~~"some direct assistance" shall mean that helper must be present and provide some physical guidance/support (with or without verbal direction).~~

~~"total care" shall mean that a helper must perform all or nearly all of the functions.~~

~~"rarely" shall mean that a behavior occurs quarterly or less.~~

~~"sometimes" shall mean that a behavior occurs once a month or less.~~

~~"often" shall mean that a behavior occurs 2-3 times a month.~~

~~"regularly" shall mean that a behavior occurs weekly or more.~~

~~§ 4.1 Utilization Control regulations require that criteria be formulated for guidance for appropriate levels of services. Traditionally, care for the mentally retarded has been institutionally based; however, this level of care need not be confined to a specific setting. The habilitative and health needs of the client are the determining issues.~~

~~§ 4.2 The purpose of these regulations is to establish standard criteria to measure eligibility for Medicaid payment. Medicaid can pay for care only when the client is receiving appropriate services and when "active treatment" is being provided. An individual's need for care must meet these criteria before any authorization for payment by Medicaid will be made for either institutional or waivered rehabilitative services for the mentally retarded.~~

~~§ 4.3 Care in facilities for the mentally retarded requires planned programs for habilitative needs and/or health related services which exceed the level of room, board, and supervision of daily activities.~~

~~Such cases shall be combination of habilitative, rehabilitative, and health services directed toward increasing the functional capacity of the retarded person. Examples of services shall include training in the activities of daily living, task learning skills, socially acceptable behaviors, basic community living programming, or health care and health maintenance. The overall objective of programming shall be the attainment of the optimal physical, intellectual, social, or task learning level which the person can presently or potentially achieve.~~

~~§ 4.4 The evaluation and re-evaluation for care in a facility for the mentally retarded shall be based on the needs of the person, the reasonable expectations of the resident's capabilities, the appropriateness of programming, whether progress is demonstrated from the training and, in an institution, whether the services could reasonably be provided in a less restrictive environment.~~

~~§ 4.5 Patient assessment criteria. The patient assessment criteria are divided into broad categories of needs, or services provided. These must be evaluated in detail to determine the abilities/skills which will be the basis for the development of a plan for care. The evaluation process will demonstrate a need for programming an array of skills and abilities or health care services. These have been organized in seven major categories. Level of functioning in each category is graded from the most dependent to the least dependent. In some categories, the dependency status is rated by the degree of assistance required. In other categories, the dependency is established by the frequency of a behavior or ability to perform a given task.~~

~~§ 4.6 The resident must meet the indicated dependency level in TWO OR MORE of categories 1 through 7.~~

~~1. Two or more questions must be answered with a 4, OR~~

~~2. Question "j" must be answered "yes."~~

~~B. Communication Skills -- To meet this category three or more questions must be answered with a 3 or a 4.~~

~~C. Task Learning Skills -- To meet this category three or more questions must be answered with a 3 or a 4.~~

~~D. Personal Care -- To meet this category~~

~~1. Question "a" must be answered with a 4 or a 5, OR~~

2. Question "b" must be answered with a 4 or a 5, OR

3. Questions "c" and "d" must be answered with a 4 or a 5.

E. Mobility - To meet this category any one question must be answered with a 4 or a 5.

F. Behavior - To meet this category any one question must be answered with a 3 or a 4.

G. Community Living - To meet this category

1. Any two of the questions "b", "e", or "g" must be answered with a 4 or a 5, OR

2. Three or more questions must be answered with a 4 or a 5.

§ 4.7. Level of functioning survey.

A. HEALTH STATUS				
How often is nursing care or nursing supervision by a licensed nurse required for the following? (Key:1=rarely, 2=sometimes, 3=often, and 4=regularly)				
1. Medication administration and/or evaluation for effectiveness of a medication regimen?	1	2	3	4
2. Direct services: i.e., care for lesions, dressings, treatments, (other than shampoos, foot power, etc.)	1	2	3	4
3. Seizures control	1	2	3	4
4. Teaching diagnosed disease control and care, including diabetes	1	2	3	4
5. Management of care of diagnosed circulatory or respiratory problems	1	2	3	4
6. Motor disabilities which interfere with all activities of Daily Living - Bathing, Dressing, Mobility, Toileting, etc.	1	2	3	4
7. Observation for choking/aspiration while eating, drinking?	1	2	3	4
8. Supervision of use of adaptive equipment, i.e., special spoon, braces, etc.	1	2	3	4
9. Observation for nutritional problems (i.e., undernourishment, swallowing difficulties, obesity)	1	2	3	4
10. Is age 55 or older, has a diagnosis of a chronic disease and has been in an institution 20 years or more	1	2	3	4
B. COMMUNICATION				
Using the Key 1=regularly, 2=often, 3=sometimes, 4=rarely, how often does this person				
1. Indicate wants by pointing, vocal noises, or signs?	1	2	3	4
2. Use simple words, phrases, short sentences?	1	2	3	4
3. Ask for at least ten things using appropriate names?	1	2	3	4
4. Understand simple words, phrases or instructions containing prepositions: i.e., on in behind?	1	2	3	4
5. Speak in an easily understood manner?	1	2	3	4
6. Identify self, place of residence, and significant others?	1	2	3	4
C. TASK LEARNING SKILLS				
How often does this person perform the following activities (Key: 1=regularly, 2=often, 3=sometimes, 4=rarely)				
1. Pay attention to purposeful activities for 5 minutes?	1	2	3	4
2. Stay with a 3 step task for more than 15 minutes?	1	2	3	4
3. Tell time to the hour and understand time intervals?	1	2	3	4
4. Count more than 10 objects?	1	2	3	4
5. Do simple addition, subtraction?	1	2	3	4

6. Write or print ten words?	1	2	3	4
7. Discriminate shapes, sizes, or colors?	1	2	3	4
8. Name people or objects when describing pictures?	1	2	3	4
9. Discriminate between one, many, lot?	1	2	3	4
D. PERSONAL and SELF CARE				
With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structures, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)				
1. Perform toileting functions: i.e., maintain bladder and bowel continence, clean self, etc.?	1	2	3	4	5
2. Perform eating/feeding functions: i.e., drinks liquids and eats with spoon or fork, etc.?	1	2	3	4	5
3. Perform bathing function: i.e., bathes, runs bath, dry self, etc.?	1	2	3	4	5
4. Dress self completely, i.e., including fastening, putting on clothes, etc.?	1	2	3	4	5
E. MOBILITY				
With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structures, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)				
1. Move, (walking, wheeling) around environment?	1	2	3	4	5
2. Rise from lying down to sitting positons, sits without support?	1	2	3	4	5
3. Turn and position in bed, roll over?	1	2	3	4	5

F. BEHAVIOR				
How often does this person (Key:1=Rarely, 2=Sometimes, 3=Often, and 4=Regularly)				
1. Engage in self destructive behavior?	1	2	3	4
2. Threaten or do physical violence to others?	1	2	3	4
3. Throw things, damage property, have temper outbursts?	1	2	3	4
4. Respond to others in a socially unacceptable manner (without undue anger, frustration, or hostility)	1	2	3	4
G. COMMUNITY LIVING SKILLS				
With what type of assistance can this person currently (Key:1=No Assistance, 2=Prompting/Structures, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)				
1. Prepare simple foods requiring no mixing or cooking?	1	2	3	4	5
2. Take care of personal belongings, room (excluding vacuuming, ironing, clothes washing/drying, wet mopping)?	1	2	3	4	5
3. Add coins of various denominations up to one dollar?	1	2	3	4	5
4. Use the telephone to call home, doctor, fire, police?	1	2	3	4	5
5. Recognize survival signs/words: i.e., stop, go, traffic lights, police, men, women, restrooms, danger, etc.?	1	2	3	4	5
6. Refrain from exhibiting unacceptable sexual behavior in public?	1	2	3	4	5

~~7. Go around cottage, ward, building, without running away, wandering off, or becoming lost?~~	~~1~~	~~2~~	~~3~~	~~4~~	~~5~~
~~8. Make minor purchases, i.e., candy, soft drink, etc?~~	~~1~~	~~2~~	~~3~~	~~4~~	~~5~~

12VAC30-60-361. Criteria for supports and services in intermediate care facilities for individuals with intellectual disabilities.

A. This section establishes standard criteria that shall be met by individuals in order to receive Medicaid payment for care in intermediate care facilities for individuals with intellectual disabilities (ICF/IID). Once the individual has been screened and found to meet these criteria, Medicaid covers the costs of care only when the individual is receiving appropriate supports and services and when active treatment, as set forth in 42 CFR 483.440(a), is being provided.

B. Supports and services that are provided in facilities for individuals with developmental or intellectual disabilities for the purpose of claiming Medicaid reimbursement requires individualized, person-centered planned programs of supports and services to address habilitative needs or health needs, or both, as set forth in 42 CFR 483.21.

1. Such care may be a combination of habilitative, rehabilitative, and health services directed toward increasing or maintaining the highest mental, physical, and psychosocial skills and abilities of the individual. Individuals with degenerative conditions shall receive supports and services designed to retain skills and functioning and to prevent further regression to the extent possible. Examples of such care include (i) skill building in the activities of daily living, (ii) skill building in task-learning, (iii) learning socially acceptable behaviors, (iv) learning basic community living skills, (v) health care and health maintenance, and (vi) skill building in self direction.

2. The overall objective of facility based supports and services, as set out in the person-centered plan, shall be the attainment of the optimal physical, intellectual, social, or task learning level that the individual can presently or potentially achieve.

C. Level of dependency and level of functioning criteria.

1. An individual's need for care shall meet the level of functioning criteria in the Virginia Individual Developmental Disability Eligibility Survey (VIDES) before any authorization for payment by Medicaid will be made for institutional services.

2. The level of dependency in each category shall be indicated from the most dependent to the least dependent. In some categories, the dependency status shall be rated by the degree of assistance required, while in other categories, the dependency shall be established by the frequency of a behavior or the ability to perform a given task.

a. The adult-individual (18 years of age and older) shall demonstrate an overall total level for the VIDES assessment of dependency in three or more of the skills or statuses on the VIDES; to demonstrate a skill or exhibit a status, the individual shall meet the criteria for the dependency level set out for that skill or status in DMAS Form P237.

b. Children (ages three years through 17 years old) shall demonstrate an overall total level for the VIDES assessment of dependency in two or more areas for the VIDES specific for the child's age as set forth in DMAS Form P236.

c. Infants (younger than three years of age) shall demonstrate an overall total level for the VIDES assessment of dependency in two or more areas for the VIDES specific for the infant's age as set forth in DMAS Form P235.

D. Screening process for entrance into an ICF/IID shall be coordinated through DMAS or its designee.

1. ICF/IID screening requests:

a. DMAS or its designee shall accept requests for ICF/IID screenings and ensure that, within seven calendar days of referral, those screenings are scheduled.

b. DMAS or its designee shall accept requests for ICF/IID screenings and ensure that those who need emergency access are scheduled and screened within 48 hours. The criteria to determine the need for emergency access shall be one of the following:

(1) Child protective services has substantiated abuse or neglect against the primary caregiver and has removed the individual from the home, or for adults where (i) adult protective services has found that the individual needs and accepts protective services or (ii) abuse or neglect has not been founded, but corroborating information from other sources (agencies) indicate that there is an inherent risk present and there are no other caregivers available to provide support services to the individual.

(2) Death of primary caregiver or lack of alternative caregiver coupled with the individual's inability to care for himself and endangerment to self or others without supports.

c. The screening will be provided to the chosen ICF/IID during its assessment and admission process when requested by the facility.

d. Screenings by the DMAS designee shall be completed or approved prior to admission to an ICF/IID.

2. DMAS or its designee shall also explore and review more integrated community options with the individual and family or guardian at the time of screening and through the established review recommendations and procedures with DBHDS.

E. Upon admission to an ICF/IID, the facility shall perform an assessment of the individual consistent with 42 CFR 483.440.

F. The assessment and reassessment for determination of continued stay in the ICF/IID level of care shall be performed by the interdisciplinary team and be based on (i) the needs of the individual, (ii) the individual's capabilities, (iii) the appropriateness of services and supports to be provided, (iv) the progress the individual demonstrates from the skill building, and (v) whether the services and supports could reasonably be provided and are available in a less restrictive environment.

G. The individual assessment shall be evaluated in detail to determine the skills, abilities, and status that will be the basis for the development of an individual program plan (IPP). The assessment process shall indicate a need for an IPP that addresses the individual's skills, abilities, and need for health care services as set forth in 42 CFR 483.440.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (12VAC30-60)

~~Certificate of Medical Necessity — Durable Medical Equipment and Supplies, DMAS 352 (rev. 8/95).~~

~~Request for Hospice Benefits, DMAS 420 (rev. 1/99).~~

Virginia Individual Developmental Disabilities Eligibility Survey - Infants' Version, P235 (eff. 3/2016)

Virginia Individual Developmental Disabilities Eligibility Survey - Children's Version, P236 (eff. 3/2016)

Virginia Individual Developmental Disabilities Eligibility Survey - Adults' Version, P237 (eff. 3/2016)

VA.R. Doc. No. R19-5099; Filed November 26, 2018, 8:25 a.m.

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC30-120. Waivered Services (adding 12VAC30-120-600 through 12VAC30-120-690).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Expiration Date Extended Through: June 14, 2019.

The Governor approved the request of the Department of Medical Assistance Services to extend this emergency regulation for six months as provided in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency action will continue in effect through June 14, 2019. The emergency regulation established provisions for Commonwealth Coordinated Care Plus, which is the statewide Medicaid managed long-term services and supports program, and was published in 33:23 VA.R. 2539-2549 July 10, 2017.

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

VA.R. Doc. No. R17-4974; Filed December 12, 2018, 2:45 p.m.

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-900 through 12VAC30-120-925, 12VAC30-120-927, 12VAC30-120-930, 12VAC30-120-935, 12VAC30-120-945; repealing 12VAC30-120-1700, 12VAC30-120-1705, 12VAC30-120-1710 through 12VAC30-120-1770).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396.

Expiration Date Extended Through: June 27, 2020.

The Governor approved the request of the Department of Medical Assistance Services to extend this emergency regulation for six months as provided in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency action will continue in effect through June 27, 2020. The emergency regulation establishes Commonwealth Coordinated Care Plus (CCC Plus) and was published in 33:24 VA.R. 2377-2437 July 23, 2018. Individuals previously served under the Elderly and Disabled with Consumer Direction and the Technology Assistance Waivers are included in CCC Plus, which operates under a fully integrated model across the full continuum of care and with very few carved out services.

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

VA.R. Doc. No. R18-5055; Filed December 12, 2018, 2:45 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.1024).**

Statutory Authority: § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: February 15, 2019.

Agency Contact: Jay Withrow, Director, Legal Support, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-9873, FAX (804) 786-8418, or email jay.withrow@doli.virginia.gov.

Summary:

In a final rule, federal Occupational Safety and Health Administration (OSHA) extended the compliance date for certain ancillary requirements in the general industry beryllium standard. The provisions affected include methods of compliance, beryllium work areas, regulated areas, personal protective clothing and equipment, hygiene areas and practices, housekeeping, communication of hazards, and recordkeeping. In this regulatory action, the board adopts this final rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Statement of Final Agency Action: On November 8, 2018, the Safety and Health Codes Board adopted federal OSHA's Limited Extension of Select Compliance Dates for the Occupational Exposure to Beryllium in General Industry, as published in 83 FR 39351 through 83 FR 39360 on August 9, 2018, with an effective date of February 15, 2019.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
August 9, 2018	February 15, 2019

VA.R. Doc. No. R19-5757; Filed November 27, 2018, 4:37 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Fast-Track Regulation

Title of Regulation: **18VAC50-11. Public Participation Guidelines (amending 18VAC50-11-50).**

Statutory Authority: §§ 2.2-4007.02, 54.1-201, and 54.1-1102 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 23, 2019.

Effective Date: February 7, 2019.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

Basis: Section 2.2-4007.02 of the Code of Virginia mandates each agency develop, adopt, and use Public Participation Guidelines for soliciting the input of interested parties in the formation and development of its regulations. Chapter 795 of the 2012 Acts of Assembly provides that in formulating any regulation or in evidentiary hearings on regulations, an interested party shall be entitled to be accompanied by and represented by counsel or other qualified representative.

Purpose: The purpose of this action is clarity and conformity to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). 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 amendment was recommended by the Department of Planning and Budget and is intended to merely conform to the statute, so the rulemaking is not expected to be controversial and, therefore, appropriate for the fast-track rulemaking process.

Substance: The amendment provides that interested persons may be accompanied by and represented by counsel or other representative when presenting their views in the promulgation of any regulatory action.

Issues: As the proposed change merely conforms the regulation to statute, the primary advantage for the agency and the public is to ensure consistency between the law and regulation, which should reduce the chance of any confusion. 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 Chapter 795 of the 2012 Acts of Assembly,[1] the Board for Contractors (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 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 Board for Contractors concurs with the approval of the economic impact analysis.

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

18VAC50-11-50. 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. R19-5470; Filed November 26, 2018, 11:03 a.m.

Proposed Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-30 through 18VAC50-22-60).**

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

Public Hearing Information:

February 7, 2019 - 10 a.m. - Commonwealth of Virginia Conference Center, Perimeter Center, Training Room 2, 9960 Mayland Drive, Richmond, Virginia 23233

Public Comment Deadline: February 22, 2019.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

Basis: Section 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is pursuant to the board's discretion but shall not be in conflict with the purposes of the statutory authority.

Purpose: On December 1, 2012, the Board for Contractors promulgated regulations that require qualified individuals complete a technical examination in their related specialty as one of the eligibility criteria for approval of the application for licensure. On March 1, 2016, the Board for Contractors promulgated regulations that expanded the number of specialties available to applicants for licensure.

Comment received by the board since the 2012 examination requirement and the 2016 specialty examination amendment, as well as a review of examination statistics, has indicated that many contractors are performing work that is specialized to the point of not meeting any one existing specialty. As a result, the qualified individual finds it difficult to meet the examination requirements and obtain licensure because the material covered in the technical examination is too broad for the applicant's specialized expertise.

The proposed miscellaneous contracting specialty will allow an applicant for licensure who demonstrates to the Board for Contractors that the work performed is too specialized to be categorized in an existing specialty to obtain a license just for that one particular area. Currently, a number of these applicants are unable to pass the technical examination and are not able to become licensed. The proposed miscellaneous contracting specialty will allow these applicants to become licensed and engage in business within the Commonwealth. The proposed miscellaneous contracting specialty will ensure the least restrictive regulatory environment necessary for niche contractors while still protecting the public's health, safety, and welfare.

Substance: The board proposes adding the miscellaneous contracting specialty to 18VAC50-22-30 with a definition to allow eligible contractors to perform work in a narrow and defined scope that may not be covered by any of the other specialties.

Issues: Current regulations provide more than 50 different classifications or specialties available to licensed contractors

(e.g., residential building, roofing, plumbing, swimming pool construction, and painting). Since 2012, the qualified individual for license specialties that do not require an individual license (e.g., trade-related specialties, elevator/escalator, and water well systems) must successfully complete a technical examination based on the work permitted under the scope of practice for each specialty as outlined in 18VAC50-22-20 and 18VAC50-22-30.

There have been some instances, however, where the contractor is performing a solitary activity that, while it falls under a specialty listed in the regulations, is specialized to the point of being a single restricted activity. For example, in 2014 a contractor applied for a license to install curtains as a subcontractor for a project involving the historical renovation of a theatre. The company only installs theatre curtains and was licensed to do so in another state. Because Virginia does not offer a specialty restricted only to theatre curtain installation, the contractor was forced to apply for the multipurpose commercial improvement contracting (CIC) specialty. The qualified individual was tested on framing, drywall, finish carpentry, painting, commercial build outs, and other work that would fall under the CIC specialty, but nothing regarding theatre curtains. The applicant took the examination multiple times before being able to pass, primarily because the exam did not cover the type of work that the company performed.

The proposed amendments would allow contractors who perform a single restrictive task to apply for the miscellaneous contracting specialty, which permit the license holder to perform only that one task. A miscellaneous contracting specialty is less burdensome on such contractors as well as advantageous to the public as it would allow these companies to become licensed. There are no anticipated disadvantages to the public.

The proposed amendments present no disadvantages to the board, the Department of Professional and Occupational Regulation, or the Commonwealth. The advantages would include a less burdensome, more business friendly path for niche contractors to obtain licensure.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Contractors (Board) proposes to create an additional contracting specialty.

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

Estimated Economic Impact. Virginia Code § 54.1-1103 prohibits performing contracting work without a license. In order to issue a contactors license, the Board designates at least one of the specialties (e.g. roofing, plumbing, painting, etc.) listed in the regulation. Currently there are more than 50 classifications/specialties. Generally, passing of a technical exam is required for a specialty designation. However, the Board has recently had individuals whose scope of work has been limited to a single activity within a specialty and therefore had struggled to pass the specialty exam because they did not have the broad knowledge and experience associated with all aspects of that specialty. These individuals wanted to be able to perform contracting work in the very narrow scope of work they are familiar with and had no interest in performing other work in the broader scope of that specialty. The examples of such individuals include someone who wanted to install only theatre curtains without obtaining a commercial improvement contracting specialty designation and someone who wanted to install only guardrails without having any interest in performing any other highway construction work.

In order to accommodate individuals in those situations, the Board proposes to create a Miscellaneous Specialty. This proposed specialty would be used in those instances where the work being performed by the contractor is restricted to a single activity, and that activity is more limited than the functions provided by any other specialty offered by the Board. This specialty however, may not be used for work that would fall under the electric, heating and cooling, plumbing, gas fitting, liquefied petroleum, natural gas fitting, elevator/escalator, water well/pump, accessibility service, lead abatement, or asbestos classifications and specialties.

Under the proposed language, an individual will be allowed to apply to the Board for a Miscellaneous Specialty and their scope of work will be limited to what they declare to the Board. There will be no specialty exam. Applicants for this type of contractor license will have their application reviewed by the Board in the same way that other non-routine applications are currently processed. Most of these applications are sent first to the board's Application Review Committee, who will typically approve an application between 80 and 90 percent of the time. Applications that are not approved are sent to the board for an informal fact finding (IFF) procedure pursuant to Virginia Code § 2.2-4019. The presiding officer at the IFF can either approve the application or make a recommendation to the full board, who then makes a case decision to either approve or deny the application. If an applicant is dissatisfied with the board's denial, that appeal would be made to Circuit Court. The Board estimates that over the past two years, approximately twelve contractors might have been eligible to apply for the specialty classification under this procedure, and of those twelve, perhaps half would have been granted.

The proposed regulation would benefit the applicants for Miscellaneous Specialty in that they would be allowed to obtain a license, perform contracting work, and participate in business. They would also avoid paying $85 for the specialty examination and spending their time to complete the examination as there would be no exam required, and they

would likely avoid taking it multiple times due to their inability to pass the exam for any of the current specialties.

Issuing additional licenses would add to the administrative costs of the Department of Professional and Occupational Regulation (DPOR). Administrative costs are likely to be low in most cases because most applications would be determined by the Application Review Committee that already meets on a regular basis. Only if the application goes to an IFF, would there be an additional administrative cost. This amount would likely vary between $150-$300, depending on the complexity of the proceeding. The license fees are $385 for a Class A license, $370 for a Class B license, or $235 for a Class C license. These fees would be used to cover the administrative costs associated with issuing such licenses.

DPOR does not expect any additional health or safety risks due to issuing licenses with the Miscellaneous Specialty. According to DPOR, a contractor applying for the Miscellaneous Specialty would be required to provide the Board with significant documentation indicating that they possess the knowledge, skills, and ability to perform the work for which they wish to be licensed. Because the proposed regulation benefits Miscellaneous Specialty applicants without a likely increase in health and safety risks, it should produce a net economic benefit.

Businesses and Entities Affected. DPOR estimates that there would be 50-100 applications for the Miscellaneous Specialty contractors license.

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

Projected Impact on Employment. The proposed regulation would allow an estimated 50-100 individuals to obtain a Miscellaneous Specialty contractors license and provide their services. There would also be an increased workload at DPOR. Thus, the proposed regulation should have a positive impact on employment.

Effects on the Use and Value of Private Property. The proposed regulation would enable 50-100 individuals to establish a licensed contracting business. Thus, a positive 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. The proposed amendment does not impose costs on small businesses.

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 agency concurs with the economic impact analysis.

Summary:

The proposed amendments add a contractor license specialty to accommodate those instances where the work being performed by the contractor is restricted to a single activity, and that activity is more limited than the functions provided by any other specialty offered by the Board for Contractors.

18VAC50-22-30. Definitions of specialty services.

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

"Accessibility services contracting" (Abbr: ASC) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work. This specialty does not include work on limited use-limited application (LULA) elevators.

"Accessibility services contracting - LULA" (Abbr: ASL) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, private residence elevators, and limited use-limited application (LULA) elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work.

"Alternative energy system contracting" (Abbr: AES) means the service that provides for the installation, repair or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. This service does not include the installation of emergency generators powered by fossil fuels. No other classification or specialty

service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Asbestos contracting" (Abbr: ASB) means the service that provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means the service that provides for the installation of asphalt paving or sealcoating, or both, on subdivision streets and adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means the service that provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H and CBC are the classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function.

"Blast/explosive contracting" (Abbr: BEC) means the service that provides for the use of explosive charges for the repair, improvement, alteration, or demolition of any real property or any structure annexed to real property.

"Commercial improvement contracting" (Abbr: CIC) means the service that provides for repair or improvement to structures not defined as dwellings and townhouses in the USBC. The CBC classification also provides for this function. The CIC specialty does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means the service that provides for all work in connection with the processing, proportioning, batching, mixing, conveying, and placing of concrete composed of materials common to the concrete industry. This includes finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing, and waterproofing. Construction and assembling of forms, molds, slipforms, and pans, centering, and the use of rebar are also included. The CBC, RBC, and H/H classifications also provide for this function.

"Drug lab remediation contracting" (Abbr: DLR) means the service that provides for the cleanup, treatment, containment, or removal of hazardous substances at or in a property formerly used to manufacture methamphetamine or other drugs and may include demolition or disposal of structures or other property. No other classification or specialty provides for this function.

"Drywall contracting" (Abbr: DRY) means the service that provides for the installation, taping, and finishing of drywall, panels and assemblies of gypsum wallboard, sheathing, and cementitious board and the installation of studs made of sheet metal for the framing of ceilings and nonstructural partitioning. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Electronic/communication service contracting" (Abbr: ESC) means the service that provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which operate at 50 volts or less. A firm holding an ESC license is responsible for meeting all applicable tradesman licensure standards. The ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means the service that provides for the installation, repair, improvement, or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license is responsible for meeting all applicable individual license and certification regulations. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means the service that provides for the construction of a well to monitor hazardous substances in the ground.

"Environmental specialties contracting" (Abbr: ENV) means the service that provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Equipment/machinery contracting" (Abbr: EMC) means the service that provides for the installation or removal of equipment or machinery including conveyors or heavy machinery. Boilers exempted by the Virginia Uniform Statewide Building Code (13VAC5-63) but regulated by the Department of Labor and Industry are also included in this specialty. This specialty does not provide for any electrical, plumbing, process piping, or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means the service that provides for the installation, repair, or improvement of a nonresidential farm building or structure, or nonresidential farm accessory-use structure, or additions thereto. The CBC classification also provides for this function. The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Finish carpentry contracting" (Abbr: FIN) means the service that provides for the installation, repair, and finishing of cabinets, sash casing, door casing, wooden flooring, baseboards, countertops, and other millwork. Finish carpentry does not include the installation of ceramic tile, marble, and artificial or cultured stone. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Fire alarm systems contracting" (Abbr: FAS) means the service that provides for the installation, repair, or improvement of fire alarm systems that operate at 50 volts or less. The ELE classification also provides for this function. A firm with an FAS license is responsible for meeting all applicable tradesman licensure standards.

"Fire sprinkler contracting" (Abbr: SPR) means the service that provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of systems permitted to be designed in accordance with the plumbing provisions of the USBC. This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and incidental to the sprinkler system installation when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Fire suppression contracting" (Abbr: FSP) means the service that provides for the installation, repair, improvement, or removal of fire suppression systems including halon and other gas systems, dry chemical systems, and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Flooring and floor covering contracting" (Abbr: FLR) means the service that provides for the installation, repair, improvement, or removal of materials that are common in the flooring industry. This includes wood and wood composite flooring, tack strips or other products used to secure carpet, vinyl and linoleum, ceramic, marble, stone, and all other types of tile, and includes the installation or replacement of subflooring, leveling products, or other materials necessary to facilitate the installation of the flooring or floor covering. This does not include the installation, repair, or removal of floor joists or other structural components of the flooring system. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Framing subcontractor" (Abbr: FRM) means the service which, while serving in the role of a subcontractor to a licensed prime contractor, provides for the construction, removal, repair, or improvement to any framing or rough carpentry necessary for the construction of framed structures, including the installation and repair of individual components of framing systems. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Gas fitting contracting" (Abbr: GFC) means the service that provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm holding a GFC license is responsible for meeting all applicable individual (tradesman) licensure regulations.

"Glass and glazing contracting" (Abbr: GLZ) means the service that provides for the installation, assembly, repair, improvement, or removal of all makes and kinds of glass, glass work, mirrored glass, and glass substitute for glazing; executes the fabrication and glazing of frames, panels, sashes and doors; or installs these items in any structure. This specialty includes the installation of standard methods of weatherproofing, caulking, glazing, sealants, and adhesives. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Home improvement contracting" (Abbr: HIC) means the service that provides for repairs or improvements to dwellings and townhouses as defined in the USBC or structures annexed to those dwellings or townhouses as defined in the USBC. The RBC classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include new construction functions beyond the existing building structure other than decks, patios, driveways, and utility out buildings that do not require a permit per the USBC.

"Industrialized building contracting" (Abbr: IBC) means the service that provides for the installation or removal of an industrialized building as defined in the Virginia Industrialized Building Safety Regulations (13VAC5-91). This classification covers foundation work in accordance with the provisions of the Virginia Uniform Statewide Building Code (13VAC5-63) and allows the licensee to complete internal tie-ins of plumbing, gas, electrical, and HVAC systems. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The CBC and RBC classifications also provide for this function.

"Insulation and weather stripping contracting" (Abbr: INS) means the service that provides for the installation, repair, improvement, or removal of materials classified as insulating media used for the sole purpose of temperature control or sound control of residential and commercial buildings. It does not include the insulation of mechanical equipment and ancillary lines and piping. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Landscape irrigation contracting" (Abbr: ISC) means the service that provides for the installation, repair, improvement,

or removal of irrigation sprinkler systems or outdoor sprinkler systems. The PLB and H/H classifications also provide for this function. This specialty may install backflow prevention devices incidental to work in this specialty when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Landscape service contracting" (Abbr: LSC) means the service that provides for the alteration or improvement of a land area not related to any other classification or service activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or placement of landscaping timbers. This specialty may remove stumps and roots below grade. The CBC, RBC, and H/H classifications also provide for this function.

"Lead abatement contracting" (Abbr: LAC) means the service that provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function, except that the PLB and HVA classifications may provide this service incidental to work in those classifications.

"Liquefied petroleum gas contracting" (Abbr: LPG) means the service that includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing, or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an LPG license is responsible for meeting all applicable individual license and certification regulations.

"Manufactured home contracting" (Abbr: MHC) means the service that provides for the installation or removal of a manufactured home as defined in the Virginia Manufactured Home Safety Regulations (13VAC5-95). This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie-ins of plumbing, gas, electrical, or HVAC equipment. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter or installing the outside compressor for the HVAC system. No other specialty provides for this function.

"Marine facility contracting" (Abbr: MCC) means the service that provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The CBC and H/H classifications also provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC, or plumbing functions.

"Masonry contracting" (Abbr: BRK) means the service that includes the installation of brick, concrete block, stone, marble, slate, or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging, and cleaning and welding of reinforcement steel related to masonry construction. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Miscellaneous contracting" (Abbr: MSC) means the service that may fall under another classification or specialty service but is more limited than the functions provided by the other classification or specialty. This specialty is limited to a single activity and will be restricted to that specialty only. This specialty may not be used for work that would fall under the ELE, HVA, PLB, GFC, LPG, NGF, EEC, WWP, ASC, LAC, or ASB classification or specialty. Contractors applying for the MSC specialty will have their applications reviewed by the Board for Contractors.

"Natural gas fitting provider contracting" (Abbr: NGF) means the service that provides for the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an NGF license is responsible for meeting all applicable individual license and certification regulations.

"Painting and wallcovering contracting" (Abbr: PTC) means the service that provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding, and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means the service that provides for additions, repairs or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means the service that provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The CBC classification also provides for this function.

"Refrigeration contracting" (Abbr: REF) means the service that provides for installation, repair, or removal of any refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are

provided by this specialty. This specialty is intended for those contractors who repair or install coolers, refrigerated casework, ice-making machines, drinking fountains, cold room equipment, and similar hermetic refrigeration equipment. The HVA classification also provides for this function.

"Roofing contracting" (Abbr: ROC) means the service that provides for the installation, repair, removal, or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Sewage disposal systems contracting" (Abbr: SDS) means the service that provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other onsite sewage disposal systems annexed to real property.

"Steel erection contracting" (Abbr: STL) means the service that provides for the fabrication and erection of structural steel shapes and plates, regardless of shape or size, to be used as structural members, or tanks, including any related riveting, welding, and rigging. This specialty includes the fabrication, placement and tying of steel reinforcing bars (rods), and post-tensioning to reinforce concrete buildings and structures. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Swimming pool construction contracting" (Abbr: POL) means the service that provides for the construction, repair, improvement, or removal of in-ground swimming pools. The CBC and RBC classifications and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow, or HVAC work is included in this specialty.

"Tile, marble, ceramic, and terrazzo contracting" (Abbr: TMC) means the service that provides for the preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, terrazzo, encaustic, faience, quarry, semi-vitreous, cementitious board, and other tile, excluding hollow or structural partition tile. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Underground utility and excavating contracting" (Abbr: UUC) means the service that provides for the construction, repair, improvement, or removal of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line, or residential or single-occupancy commercial properties, or on multi-occupancy properties at manhole or wye lateral extend to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. This specialty may install empty underground conduits in rights-of way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings if each conduit system does not include installation of any conductor wiring or connection to an energized electrical system. The H/H classification also provides for this function.

"Vessel construction contracting" (Abbr: VCC) means the service that provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this function.

"Water well/pump contracting" (Abbr: WWP) means the service that provides for the installation of a water well system, including geothermal wells, which includes construction of a water well to reach groundwater, as defined in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to and including the point of connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude the PLB, ELE, or HVA classification from installation of pumps and tanks.

Note: Specialty contractors engaging in construction that involves the following activities or items or similar activities or items may fall under the CIC, HIC, and FIC specialty services, or they may fall under the CBC or RBC classification.

Appliances	Fences	Railings
Awnings	Fiberglass	Rigging
Blinds	Fireplaces	Rubber linings
Bulkheads	Fireproofing	Sandblasting
Carpeting	Fixtures	Scaffolding
Ceilings	Grouting	Screens
Chimneys	Guttering	Shutters
Chutes	Interior decorating	Siding
Curtains	Lubrication	Skylights
Curtain walls	Metal work	Storage bins and lockers
Decks	Millwrighting	Stucco

Doors	Mirrors	Vaults
Drapes	Miscellaneous iron	Wall panels
Epoxy	Ornamental iron	Waterproofing
Exterior decoration	Partitions	Windows
Facings	Protective coatings	

Part II
Entry

18VAC50-22-40. Requirements for a Class C license.

A. A firm applying for a Class C license must meet the requirements of this section.

B. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of two years experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm; and

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (Department of Fire Programs explosive use certification),

(2) Fire sprinkler (NICET Sprinkler III certification), and

(3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

e. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).

f. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

C. The firm shall provide information for the past five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

D. The firm and all members of the responsible management of the firm shall disclose at the time of application any current or previous contractor licenses held in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

F. A member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-50. Requirements for a Class B license.

A. A firm applying for a Class B license must meet the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter, or is a member of responsible management as defined in this chapter;

3. Has passed a board-approved examination as required by § 54.1-1108 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of three years experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (Department of Fire Programs explosive use certification),

(2) Fire sprinkler (NICET Sprinkler III certification), and

(3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

e. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).

f. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of $15,000 or more.

E. Each firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed in this subsection have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated or surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-60. Requirements for a Class A license.

A. A firm applying for a Class A license shall meet all of the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm as defined in this chapter;

3. Has passed a board-approved examination as required by § 54.1-1106 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the day of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of five years of experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (DHCD explosive use certification),

(2) Fire sprinkler (NICET Sprinkler III certification), and

(3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

e. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).

f. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of $45,000.

E. The firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed in this subsection have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, the designated employee, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

VA.R. Doc. No. R18-5224; Filed November 29, 2018, 12:17 p.m.

BOARD OF MEDICINE

Fast-Track Regulation

Title of Regulation: **18VAC85-170. Regulations Governing the Practice of Genetic Counselors (amending 18VAC85-170-60).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.18 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 23, 2019.

Effective Date: February 10, 2019.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. Section 54.1-2957.19 of the Code of Virginia specifically relates to licensure of genetic counselors.

Purpose: The purpose of the regulatory action is clarity and consistency in interpretation of the law and regulation related to issuance of temporary licenses in genetic counseling. A person who passes the national examination and receives certification, as required for licensure, no longer has "active candidate status." The regulation, as currently written, appears to terminate a temporary license when active candidate status is terminated, resulting in placing a qualified genetic counselor who is employed and seeing patients in a limbo period between passage of the examination and issuance of a permanent license. The amendment is necessary to ensure continuation of the temporary license until a permanent license is issued, so there is no disruption in patient care. Likewise, the regulation is amended to clarify that failure of the examination results in termination of active candidate status and of the temporary license, so patient health and safety is not at risk by receiving care from an applicant who has not demonstrated minimal competency.

Rationale for Using Fast-Track Rulemaking Process: Upon recommendation of the Advisory Board on Genetic Counseling, the Board of Medicine voted in February 2018 to adopt an amendment by a fast-track rulemaking action. Subsequently, it was decided that § 54.1-2957.19 of the Code of Virginia should be amended, so the regulatory action was not submitted at that time. The advisory board is concerned that the statutory change may not occur in 2019 and has requested that the Board of Medicine proceed with this fast-track rulemaking action.

Substance: The amendment to 18VAC85-170-60 clarifies that if an applicant fails the licensure examination for genetic counseling, the applicant's active candidate status is terminated, and the applicant is no longer eligible for a temporary license. However, an applicant who passes the examination may continue to practice with a temporary license until a permanent license has been issued.

Issues: The advantage to the public is continuation of genetic counseling services without interruption if those services are being provided by a person with a temporary license who passes the examination and has been certified but has not yet received a permanent license issued by the board. There are no disadvantages; if an applicant fails the examination, the applicant can no longer practice with a temporary license.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (Board) proposes to allow continuance of the temporary license status of a genetic counselor applicant when he or she passes the certification exam.

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

Estimated Economic Impact. An individual may be issued a temporary genetic counselor license when he or she is granted active candidate status by the American Board of Genetic Counseling. Under the current regulatory language, a temporary license expires when the active candidate status is terminated, which occurs when the individual takes the certification exam, regardless of success or failure. As a result, the current regulation calls for termination of a temporary license when the candidate successfully passes the certification exam. The Board proposes to amend the language so that the temporary license is terminated only if the candidate fails the exam.

The proposed amendment would prevent a potential interim period for temporary license holders who have met the qualifications for permanent licensing standards, but have yet to be issued such a license by the Board. No individuals have been disadvantaged by the current regulatory language so far because licensing of genetic counselors have just started recently. The proposed change, however, is beneficial in that it would prevent potential disruptions in employment of successful candidates as well as disruptions in care of their patients.

Businesses and Entities Affected. Currently, there are five pending applications for temporary licensure. In addition, Virginia Commonwealth University, the only genetic counseling program in Virginia, graduates approximately eight new genetic counselors per year.

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

Projected Impact on Employment. The proposed regulation should help prevent unnecessary disruptions in employment of successful genetic counselor candidates. Thus, a potential negative impact on employment would be avoided.

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. The proposed amendment does not create costs. In addition, it should not have other effects on small businesses as genetic counselors usually practice in large medical institutions/hospital systems.

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

Adverse Impacts:

Businesses. The proposed amendment should benefit large institutions/hospital systems by preventing a potential disruption in their employment of successful genetic counselor candidates.

Localities. The proposed amendment would not adversely affect localities.

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

Agency's Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendment clarifies that if an applicant fails the licensure examination for genetic counseling, the applicant's active candidate status is terminated and the applicant is no longer eligible for a temporary license. An applicant who passes the examination may continue to practice with a temporary license until a permanent license has been issued.

18VAC85-170-60. Licensure requirements.

A. An applicant for a license to practice as a genetic counselor shall provide documentation of (i) a master's degree from a genetic counseling training program that is accredited by the Accreditation Council of Genetic Counseling and (ii) a current, valid certificate issued by the ABGC or ABMG to practice genetic counseling.

B. Pursuant to § 54.1-2957.19 D of the Code of Virginia, applicants for licensure who do not meet the requirements of subsection A of this section may be issued a license provided they (i) apply for licensure before December 31, 2018; (ii) comply with the board's regulations relating to the NSGC Code of Ethics; (iii) have at least 20 years of documented work experience practicing genetic counseling; (iv) submit two letters of recommendation, one from a genetic counselor and another from a physician; and (v) have completed, within the last five years, 25 hours of continuing education approved by the NSGC or the ABGC. For the purpose of this subsection, the board deems the provisions of Part IV (18VAC85-170-110 et seq.) of this chapter to be consistent with the NSGC Code of Ethics.

C. An applicant for a temporary license shall provide documentation of having been granted the active candidate status by the ABGC. Such license shall expire 12 months from issuance or upon ~~expiration of active candidate status~~ failure of the ABGC certification examination, whichever comes first.

VA.R. Doc. No. R19-5422; Filed November 21, 2018, 1:45 p.m.

BOARD OF PHARMACY

Proposed Regulation

Titles of Regulations: **18VAC110-15. Regulations for Delegation to an Agency Subordinate (adding 18VAC110-15-10).**

18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-10, 18VAC110-20-20, 18VAC110-20-25, 18VAC110-20-110, 18VAC110-20-140, 18VAC110-20-150, 18VAC110-20-180, 18VAC110-20-200, 18VAC110-20-211, 18VAC110-20-220, 18VAC110-20-240, 18VAC110-20-270, 18VAC110-20-280, 18VAC110-20-290, 18VAC110-20-355, 18VAC110-20-390, 18VAC110-20-425, 18VAC110-20-470, 18VAC110-20-490, 18VAC110-20-530, 18VAC110-20-550, 18VAC110-20-580, 18VAC110-20-630, 18VAC110-20-680; adding 18VAC110-20-112; repealing 18VAC110-20-15, 18VAC110-20-21, 18VAC110-20-30 through 18VAC110-20-106).

18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (adding 18VAC110-21-10 through 18VAC110-21-180).

18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehousers (amending 18VAC110-50-40, 18VAC110-50-60, 18VAC110-50-80).

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

Public Hearing Information:

January 9, 2019 - 9:05 a.m. - Perimeter Center, Commonwealth Conference Center, 9960 Mayland Drive, Suite 201, Board Room 4, Henrico, VA 23233

Public Comment Deadline: February 22, 2019.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia establishes the general powers and duties of health regulatory boards, including the responsibility to promulgate regulations and establish renewal schedules. The specific authority to control prescription drugs in the Commonwealth is found in Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: Regulation of the practice of pharmacy is both complex and essential to public health and safety. The Board of Pharmacy takes seriously its statutory responsibility to ensure the safety, integrity, and efficacy of prescription drugs in the Commonwealth. At the same time, the practice of pharmacy is constantly changing as new technologies become available. To incorporate efficiency and cost-effectiveness, rules for pharmacy practice must be changed while balancing the assurances that controlled substances are dispensed in a manner that protects from medication error and diversion that is harmful to the patient and the community.

Substance: As part of the periodic review, the board determined that provisions in 18VAC110-20 relating to the licensure of pharmacists and registration of pharmacy technicians should be re-promulgated into a separate chapter, 18VAC110-21, to reduce the size and complexity of this chapter. Some of Part I, General Provisions, will be included in a new chapter, and all of Parts II and III will be repealed and restated. Additionally, 18VAC110-20-15, Criteria for delegation of informal fact-finding proceedings to an agency subordinate, will be moved into a separate chapter, 18VAC110-15, because it applies to all types of licensees, registrants, and permit holders regulated by the board.

Issues: The primary advantage to the public may be stronger provisions defining unprofessional conduct, such as "performing any act likely to deceive, defraud, or harm the public." While the board may currently be able to establish grounds for disciplinary action, additional specificity strengthens the ability of the board to take action if there is harm to the public. There are no disadvantages to the public. With exception of clearer rules for licensees, there are no advantages or disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a periodic review,[1] the Board of Pharmacy (Board) proposes to mainly update and reformat the regulation to improve clarity and readability. The proposed regulation also contains a number of changes to address issues identified in practice or to streamline enforcement.

Result of Analysis. The benefits likely exceed the costs.

Estimated Economic Impact. The majority of the changes in this action are intended to improve clarity and readability of the regulation without introducing any new requirements or altering existing ones. However, there are proposals that represent a change in practice. One such change is the proposed update of the practices that constitute unprofessional conduct. Based on situations encountered in disciplinary cases and/or included in other chapters enacted by other health regulatory boards, the Board proposes to update what constitutes unprofessional conduct. For example, obtaining money or property of a patient by fraud or misrepresentation, providing false information to the compliance inspector, performing acts to deceive, defraud, or harm the public are now listed in this section. This change does not directly affect any particular person or entity at this time but may be the basis of a disciplinary action for someone in the future.

In another change, the Board proposes to specify that if the pharmacy is not operational within 90 days from issuance of a new permit, the permit is rescinded unless an extension is granted. Normally, controlled substances should not be left in a facility that is not operational. This change was prompted by a questionable pharmacy operation that came to the Board's attention, but the Board could not take action due to lack of authority to rescind such a permit. Under the proposed rule, the Board will allow 90 days from the date the permit is issued for last minute preparations to occur. This change is not expected to have any direct impact on any regulated entity at this time because the questionable pharmacy operation has already been ceased but will likely strengthen the Board's enforcement authority if and when needed.

Similarly, one of the medical equipment suppliers has challenged the Board's authority to request hours of its operation. Medical equipment suppliers are sometimes open for limited hours, complicating enforcement. Without such information, the Board could not effectively schedule an unannounced inspection of the facility. Thus, the Board proposes to require that a medical equipment supplier must designate the hours of operation when it is open to the public and to require notification to the Board and to the public if those hours change. These requirements are similar to those for pharmacies. With the requested information, the Board will know the hours of operation, when the facility is open, and when an inspection can occur.

The Board is also concerned with the adequacy of the current requirements to become a pharmacist-in-charge. There is no minimum experience requirement to become a pharmacist-in-charge, yet the position requires broad knowledge of pharmacy operations and significant responsibilities for the inventory and security of the pharmacy. Thus, the Board proposes to require a minimum of two years of experience before becoming a pharmacist-in-charge. This change will narrow the pool of eligible pharmacists to become a pharmacist-in-charge but will likely improve public safety and protect the pharmacists who might be assigned the job of pharmacist-in-charge before he/she was ready to assume such a responsibility.

The Board proposes to require a temperature record for cold storage units and for maintenance of such record for two years. The facilities are already required to have proper refrigeration equipment to protect the integrity and safety of certain drugs such as vaccines. According to the Department of Health Professions (DHP), inexpensive tools are available to measure and record temperatures in a cold storage. This change will make sure that information to check compliance will be available for review by inspectors. Regulants may also benefit from proper refrigeration by reducing waste of valuable drugs due to exposing drugs to improper temperatures.

The Board proposes to add language that the policy and procedure manual must include provisions for granting and terminating user access in settings where automated devices dispense and administer drugs. According to the Board, it is vital that only appropriately qualified users have access to automated devices that dispense drugs to prevent diversion for personal use or for sale.

The Board proposes to require that five of the required 15 hours of continuing education for annual renewal be obtained in courses or programs that are live or interactive. The Board also proposes to allow two new activities that may be used to fulfill required live or interactive continuing education, including one hour for attendance at a board meeting or hearing and one hour for serving as a preceptor for someone gaining practical experience. The Board believes pharmacists benefit from some interaction in an educational environment, so a portion of continuing hours is proposed to be live or interactive. DHP notes that it would not be necessary for a pharmacist to attend a course in person; participation in an interactive, real-time course would suffice. To the extent live or interactive continuing education is more effective than other settings, this change should be beneficial.

The Board proposes to give a pharmacist who is presented with a forged prescription the option of returning it to the customer or keeping it for law enforcement. Current regulation prohibits the return of a forged prescription, but DHP notes that pharmacists sometimes feel threatened by refusing to return it. The regulation is being amended to give the pharmacist the option depending on the situation. This change will likely help pharmacists to safely get themselves out of a dangerous situation in the case of a criminal attempt to obtain drugs from them by forged prescriptions.

In response to a petition for rulemaking,[2] the Board proposes to allow sharing of prescriptions between a provider pharmacy for a long-term care facility and a back-up pharmacy for such a facility to dispense drugs up to a seven-day supply. Currently, the prescription must be transferred to the back-up facility to dispense any drugs. This change will facilitate coverage when the provider pharmacy experiences a temporary shortage in a medication that is needed at the facility.

Finally, the Board proposes to allow that a stat-drug box may include a substitution of liquid for solid dosage unit for each drug schedule. This change will provide more flexibility to the pharmacies that utilize stat-boxes.

Businesses and Entities Affected. There are 34,789 persons or entities that have been issued a license, registration, or permit by the Board. These entities include, but are not limited to, pharmacists, technicians, interns, pharmacies, manufacturers, wholesalers, warehouses, medical equipment suppliers, etc.

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

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

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

Real Estate Development Costs. No significant 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. There is no estimate of the number of small businesses. However, the majority of pharmacies are part of large national chains. The costs and other effects on any small business would be the same as discussed above.

Alternative Method that Minimizes Adverse Impact. The proposed changes are not likely to create a significant adverse impact on small businesses.

Adverse Impacts:

Businesses. The proposed changes are not likely to create a significant adverse impact on businesses.

Localities. The proposed regulation will not adversely affect localities.

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

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[1] http://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1466

[2] http://townhall.virginia.gov/L/ViewPetition.cfm?petitionId=233

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

Summary:

Pursuant to a periodic review, the Board of Pharmacy proposes to (i) move the provisions relating to the licensure of pharmacists and registration of pharmacy technicians from Regulations Governing the Practice of Pharmacy (18VAC110-20) into a new regulatory chapter, Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians (18VAC110-21); (ii) address current issues with practice, clarify requirements, and incorporate provisions currently found in guidance documents in 18VAC110-20 and Regulations Governing Wholesale Distributors, Manufacturers, and Warehousers (18VAC-110-50); and (iii) move the provision regarding the delegation of informal fact-finding proceedings from 18VAC110-20 into a new chapter, Regulations for Delegation to an Agency Subordinate (18VAC110-15).

CHAPTER 15
REGULATIONS FOR DELEGATION TO AN AGENCY SUBORDINATE

18VAC110-15-10. Criteria for delegation of informal fact-finding proceeding to an agency subordinate.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner or an entity may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except as may be approved by a committee of the board, include those that involve:

1. Intentional or negligent conduct that causes or is likely to cause injury to a patient;

2. Drug diversion;

3. Impairment with an inability to practice with skill and safety;

4. Indiscriminate dispensing; and

5. Medication error in administration or dispensing.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

Part I
General Provisions

18VAC110-20-10. Definitions.

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

~~"ACPE" means the Accreditation Council for Pharmacy Education.~~

"Acquisition" of an existing entity permitted, registered, or licensed by the board means (i) the purchase or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor or change in partnership composition; (iii) the acquiring of 50% or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; or (iv) the merger of a corporation owning the entity~~,~~ or of the parent corporation of a wholly owned subsidiary owning the entity~~,~~ with another business or corporation.

"Actively reports" means reporting all dispensing errors and analyses of such errors to a patient safety organization as soon as practical or at least within 30 days of identifying the error.

"Alternate delivery site" means a location authorized in 18VAC110-20-275 to receive dispensed prescriptions on behalf of and for further delivery or administration to a patient.

"Analysis" means a review of the findings collected and documented on each dispensing error, assessment of the cause and any factors contributing to the dispensing error, and any recommendation for remedial action to improve pharmacy systems and workflow processes to prevent or reduce future errors.

"Authorized collector" means a narcotic treatment program, hospital~~,~~ or clinic with an on-site pharmacy, or pharmacy that is authorized by the U.S. Drug Enforcement Administration to receive drugs ~~from an ultimate user, a person lawfully entitled to dispose of an ultimate user decedent's property, or a long-term care facility on behalf of an ultimate user who resides or has resided at that facility~~ for the purpose of destruction.

"Beyond-use date" means the date beyond which the integrity of a compounded, repackaged, or dispensed drug can no longer be assured and as such is deemed to be adulterated or misbranded as defined in §§ 54.1-3461 and 54.1-3462 of the Code of Virginia.

"Board" means the Virginia Board of Pharmacy.

~~"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.~~

~~"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.~~

"Chart order" means a lawful order for a drug or device entered on the chart or in a medical record of a patient by a prescriber or ~~his~~ the prescriber's designated agent.

"Compliance packaging" means packaging for dispensed drugs that is comprised of a series of containers for solid oral dosage forms and designed to assist the user in administering or self-administering the drugs in accordance with directions for use.

~~"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.~~

"Correctional facility" means any prison, penitentiary, penal facility, jail, detention unit, or other facility in which persons are incarcerated by government officials.

"DEA" means the U.S. Drug Enforcement Administration.

"Dispensing error" means one or more of the following discovered after the final verification by the pharmacist, regardless of whether the patient received the drug:

1. Variation from the prescriber's prescription drug order, including ~~but not limited to~~:

a. Incorrect drug;

b. Incorrect drug strength;

c. Incorrect dosage form;

d. Incorrect patient; or

e. Inadequate or incorrect packaging, labeling, or directions.

2. Failure to exercise professional judgment in identifying and managing:

a. Known therapeutic duplication;

b. Known drug-disease contraindications;

c. Known drug-drug interactions;

d. Incorrect drug dosage or duration of drug treatment;

e. Known drug-allergy interactions;

f. A clinically significant, avoidable delay in therapy; or

g. Any other significant, actual, or potential problem with a patient's drug therapy.

3. Delivery of a drug to the incorrect patient.

4. Variation in bulk repackaging or filling of automated devices, including ~~but not limited to~~:

a. Incorrect drug;

b. Incorrect drug strength;

c. Incorrect dosage form; or

d. Inadequate or incorrect packaging or labeling.

"Drug donation site" means a permitted pharmacy that specifically registers with the board for the purpose of receiving or redispensing eligible donated prescription drugs pursuant to § 54.1-3411.1 of the Code of Virginia.

"Electronic prescription" means a written prescription that is generated on an electronic application and is transmitted to a pharmacy as an electronic data file; Schedules II through V prescriptions shall be transmitted in accordance with 21 CFR Part 1300 ~~and is transmitted to a pharmacy as an electronic data file~~.

"EMS" means emergency medical services.

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

~~"Facsimile (FAX)~~ "Faxed prescription" means a written prescription or order ~~which~~ that is transmitted by an electronic device over telephone lines ~~which sends~~ that send the exact image to the receiver (pharmacy) in a hard copy form.

"FDA" means the U.S. Food and Drug Administration.

"Floor stock" means a supply of drugs that have been distributed for the purpose of general administration by a prescriber or other authorized person pursuant to a valid order of a prescriber.

~~"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.~~

"Forgery" means a prescription that was falsely created, falsely signed, or altered.

~~"FPGEC certificate" means the certificate given by the Foreign Pharmacy Equivalency Committee of NABP that certifies that the holder of such certificate has passed the Foreign Pharmacy Equivalency Examination and a credential review of foreign training to establish educational equivalency to board approved schools of pharmacy, and has~~

~~passed approved examinations establishing proficiency in English.~~

"Generic drug name" means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the United States Adopted Names (USAN) and the USP Dictionary of Drug Names.

"Hospital" or "nursing home" means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

~~"Inactive license" means a license that is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.~~

"Initials" means the first letters of a person's name or other unique personal identifier.

"Long-term care facility" means a nursing home, retirement care, mental care, or other facility or institution that provides extended health care to resident patients.

"NABP" means the National Association of Boards of Pharmacy.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

"On duty" means that a pharmacist is on the premises at the address of the permitted pharmacy and is available as needed.

"On-hold prescription" means a valid prescription that is received and maintained at the pharmacy for initial dispensing on a future date.

"Patient safety organization" means an organization that has as its primary mission continuous quality improvement under the Patient Safety and Quality Improvement Act of 2005 ~~(Pub. L.~~ (P.L. 109-41) and is credentialed by the Agency for Healthcare Research and Quality.

"Permitted physician" means a physician who is licensed pursuant to § 54.1-3304 of the Code of Virginia to dispense drugs to persons to whom or for whom pharmacy services are not reasonably available.

"Perpetual inventory" means an ongoing system for recording quantities of drugs received, dispensed, or otherwise distributed by a pharmacy.

"Personal supervision" means the pharmacist must be physically present and render direct, personal control over the entire service being rendered or act being performed. Neither prior nor future instructions shall be sufficient nor shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

"Pharmacy closing" means that the permitted pharmacy ceases pharmacy services or fails to provide for continuity of pharmacy services or lawful access to patient prescription records or other required patient records for the purpose of continued pharmacy services to patients.

~~"Pharmacy technician trainee" means a person who is currently enrolled in an approved pharmacy technician training program and is performing duties restricted to pharmacy technicians for the purpose of obtaining practical experience in accordance with § 54.1-3321 D of the Code of Virginia.~~

"PIC" means the pharmacist-in-charge of a permitted pharmacy.

"Practice location" means any location in which a prescriber evaluates or treats a patient.

"Prescription department" means any contiguous or noncontiguous areas used for the compounding, dispensing, and storage of all ~~Schedule~~ Schedules II through VI drugs and devices and any Schedule I investigational ~~drugs~~ drug.

~~"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for voluntary examination and certification of pharmacy technicians.~~

"Quality assurance plan" means a plan approved by the board for ongoing monitoring, measuring, evaluating, and, if necessary, improving the performance of a pharmacy function or system.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance~~,~~ but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Robotic pharmacy system" means a mechanical system controlled by a computer that performs operations or activities relative to the storage, packaging, compounding, labeling, dispensing, or distribution of medications~~,~~ and collects, controls, and maintains all transaction information.

"Safety closure container" means a container that meets the requirements of the federal Poison Prevention Packaging Act of 1970 (15 USC §§ 1471-1476), that is, in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five-minute period and that 80% fail in another five minutes after

a demonstration of how to open it and that 90% of a test group of 100 adults must be able to open and close the container.

"Satellite pharmacy" means a pharmacy that is noncontiguous to the centrally permitted pharmacy of a hospital but at the location designated on the pharmacy permit.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children younger than five years of age to open to obtain a toxic or harmful amount of the drug contained therein within a reasonable time and not difficult for normal adults to use properly~~,~~ but does not mean packaging that all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"Special use permit" means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

"Storage temperature" means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

1. "Cold" means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).

2. "Room temperature" means the temperature prevailing in a working area.

3. "Controlled room temperature" means a temperature maintained thermostatically that encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F); that results in a mean kinetic temperature calculated to be not more than 25°C; and that allows for excursions between 15° and 30°C (59° and 86°F) that are experienced in pharmacies, hospitals, and warehouses.

4. "Warm" means any temperature between 30° and 40°C (86° and 104°F).

5. "Excessive heat" means any temperature above 40°C (104°F).

6. "Protection from freezing" means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency~~,~~ or to the destructive alteration of its characteristics, the container label bears an appropriate instruction to protect the product from freezing.

7. "Cool" means any temperature between 8° and 15°C (46° and 59°F).

"Terminally ill" means a patient with a terminal condition as defined in § 54.1-2982 of the Code of Virginia.

"Ultimate user" means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or a member of his household.

"Unit dose container" means a container that is a single-unit container, as defined in United States Pharmacopeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a system in which multiple drugs in unit dose packaging are dispensed in a single container, such as a medication drawer or bin, labeled only with patient name and location. Directions for administration are not provided by the pharmacy on the drug packaging or container but are obtained by the person administering directly from a prescriber's order or medication administration record.

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

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

18VAC110-20-15. ~~Criteria for delegation of informal fact-finding proceedings to an agency subordinate.~~ (Repealed.)

~~A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.~~

~~B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except as may be approved by a committee of the board, include those that involve:~~

~~1. Intentional or negligent conduct that causes or is likely to cause injury to a patient;~~

~~2. Drug diversion;~~

~~3. Impairment with an inability to practice with skill and safety;~~

~~4. Indiscriminate dispensing; and~~

~~5. Medication error in administration or dispensing.~~

~~C. Criteria for an agency subordinate.~~

~~1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons~~

~~deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.~~

~~2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.~~

~~3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.~~

18VAC110-20-20. Fees.

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

~~B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.~~

~~C.~~ B. Initial application fees.

~~1. Pharmacist license~~	~~$180~~
~~2. Pharmacy intern registration~~	~~$15~~
~~3. Pharmacy technician registration~~	~~$25~~
~~4.~~ 1. Pharmacy permit	$270
~~5.~~ 2. Permitted physician licensed to dispense drugs	$270
~~6.~~ 3. Medical equipment supplier permit	$180
~~7. Humane society permit~~	~~$20~~
~~8.~~ 4. Outsourcing facility permit	$270
~~9.~~ 5. Nonresident pharmacy registration	$270
~~10.~~ 6. Nonresident outsourcing facility registration	$270
~~11.~~ 7. Controlled substances registrations	$90
~~12.~~ 8. Innovative program approval. If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.	$250
~~13. Approval of a pharmacy technician training program~~	~~$150~~
~~14. Approval of a continuing education program~~	~~$100~~
~~15.~~ 9. Approval of a repackaging training program	$50

~~D.~~ C. Annual renewal fees.

~~1. Pharmacist active license – due no later than December 31~~	~~$90~~
~~2. Pharmacist inactive license – due no later than December 31~~	~~$45~~
~~3. Pharmacy technician registration – due no later than December 31~~	~~$25~~
~~4.~~ 1. Pharmacy permit – due no later than April 30	$270
~~5.~~ 2. Physician permit to practice pharmacy – due no later than February 28	$270
~~6.~~ 3. Medical equipment supplier permit – due no later than February 28	$180
~~7. Humane society permit – due no later than February 28~~	~~$20~~
~~8.~~ 4. Outsourcing facility permit – due no later than April 30	$270
~~9.~~ 5. Nonresident pharmacy registration – due no later than the date of initial registration	$270
~~10.~~ 6. Nonresident outsourcing facility registration – due no later than the date of initial registration	$270
~~11.~~ 7. Controlled substances registrations – due no later than February 28	$90
~~12.~~ 8. Innovative program continued approval based on board order not to exceed $200 per approval period.	
~~13. Approval of a pharmacy technician training program~~	~~$75 every two years~~
~~14. Approval of a repackaging~~ 9. Repackaging training program	$30 every two years

~~E.~~ D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired ~~license~~ permit or registration within one year of the expiration date ~~or within two years in the case of a pharmacy technician training program~~. In addition, engaging in activities requiring a ~~license,~~ permit~~,~~ or registration after the expiration date of such ~~license,~~ permit~~,~~ or registration shall be grounds for disciplinary action by the board.

~~1. Pharmacist license~~	~~$30~~
~~2. Pharmacist inactive license~~	~~$15~~
~~3. Pharmacy technician registration~~	~~$10~~

~~4.~~ 1. Pharmacy permit	$90
~~5.~~ 2. Physician permit to practice pharmacy	$90
~~6.~~ 3. Medical equipment supplier permit	$60
~~7. Humane society permit~~	~~$5~~
~~8.~~ 4. Outsourcing facility permit	$90
~~9.~~ 5. Nonresident pharmacy registration	$90
~~10.~~ 6. Nonresident outsourcing facility registration	$90
~~11.~~ 7. Controlled substances registrations	$30
~~12. Approval of a pharmacy technician training program~~	~~$15~~
~~13. Approval of a repackaging~~ 8. Repackaging training program	$10

~~F.~~ E. Reinstatement fees.

1. Any person or entity attempting to renew a ~~license,~~ permit~~,~~ or registration more than one year after the expiration date~~, or more than two years after the expiration date in the case of a pharmacy technician training program,~~ shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following ~~license~~ revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

~~1. Pharmacist license~~	~~$210~~
~~2. Pharmacist license after revocation or suspension~~	~~$500~~
~~3. Pharmacy technician registration~~	~~$35~~
~~4. Pharmacy technician registration after revocation or suspension~~	~~$125~~

~~5.~~ 2. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Pharmacy permit	$240
b. Physician permit to practice pharmacy	$240
c. Medical equipment supplier permit	$210
~~d. Humane society permit~~	~~$30~~
~~e.~~ d. Outsourcing facility permit	$240
~~f.~~ e. Nonresident pharmacy registration	$115
~~g.~~ f. Nonresident outsourcing facility registration	$240
~~h.~~ g. Controlled substances registration	$180
~~i. Approval of a pharmacy technician training program~~	~~$75~~
~~j. Approval of a repackaging~~ h. Repackaging training program	$50

~~G.~~ F. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge	$50
2. Change of ownership for any facility	$50
3. Inspection for remodeling or change of location for any facility	$150
4. Reinspection of any facility	$150
5. Board-required inspection for a robotic pharmacy system	$150
6. Board-required inspection of an innovative program location	$150
7. Change of pharmacist responsible for an approved innovative program	$25

~~H.~~ G. Miscellaneous fees.

~~1. Duplicate wall certificate~~	~~$25~~
~~2.~~ 1. Returned check	$35
~~3.~~ 2. Duplicate ~~license~~ permit or registration	$10
~~4.~~ 3. Verification of ~~licensure~~ permit or registration	$25

18VAC110-20-21. ~~Public address.~~ (Repealed.)

~~An individual licensed by or registered with the board who has provided the board with a public address that is different from the address of record shall notify the board in writing if there is a change in the address.~~

18VAC110-20-25. Unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-3316 of the Code of Virginia:

1. Failing to comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records or related to provision of

patient records to another practitioner or to the patient or ~~his~~ the patient's personal representative;

2. Willfully or negligently breaching the confidentiality of a patient unless otherwise required or permitted by applicable law;

3. Failing to maintain confidentiality of information received from the Prescription Monitoring Program, obtaining such information for reasons other than to assist in determining the validity of a prescription to be filled, or misusing information received from the program;

~~4. Engaging in disruptive or abusive behavior in a pharmacy or other health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;~~

~~5. Engaging or attempting to engage in a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or his family, including but not limited to sexual misconduct with a patient or a member of his family or other conduct that results or could result in personal gain at the expense of the patient;~~

~~6.~~ 4. Failing to maintain adequate safeguards against diversion of controlled substances;

~~7.~~ 5. Failing to appropriately respond to a known dispensing error in a manner that protects the health and safety of the patient;

~~8.~~ 6. Delegating a task within the practice of pharmacy to a person who is not adequately trained to perform such a task;

~~9.~~ 7. Failing by the PIC to ensure that pharmacy interns and pharmacy technicians working in the pharmacy are registered and that such registration is current; ~~or~~

~~10. Failing to exercise professional judgment in determining whether a prescription meets requirements of law before dispensing~~

8. Obtaining money or property of a patient or client by fraud or misrepresentation;

9. Providing false information or failing to cooperate with an employee of the Department of Health Professions in the conduct on an investigation or inspection;

10. Violating any provision of this chapter or Chapter 33 (§ 54.1-3300 et seq.) or 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia;

11. Performing any act likely to deceive, defraud, or harm the public; or

12. Having a restriction of a license, permit, or registration to practice in another jurisdiction in the United States.

~~Part II~~
~~Licensure Requirements for Pharmacists~~ (Repealed)

18VAC110-20-30. ~~Requirements for pharmacy practical experience.~~ (Repealed.)

~~A. Each applicant for licensure as a pharmacist shall have gained practical experience in the practice of pharmacy as set forth in this section and 18VAC110-20-40.~~

~~B. An applicant for licensure as a pharmacist shall attain a minimum of 1,500 hours of practical experience.~~

~~C. Practical experience that is gained within an ACPE-accredited school of pharmacy, that conforms to the current ACPE standards, and that allows the student to gain at least 1,500 hours of practical experience, shall meet the board's practical experience requirements for licensure as a pharmacist.~~

~~D. All practical experience credit gained outside of an ACPE-accredited school of pharmacy program shall only be gained after successful completion of the equivalent of at least two semesters in an ACPE-accredited school of pharmacy. Credit shall not be given for more than 50 hours in one week and not less than an average of 20 hours per week averaged over a month. The board may grant an exception to the minimum number of hours for good cause shown.~~

~~E. In accordance with § 54.1-3312 of the Code of Virginia, all practical experience required by this section shall be gained within the United States.~~

18VAC110-20-40. ~~Procedure for gaining practical experience.~~ (Repealed.)

~~A. Each person desiring to gain practical pharmacy experience in Virginia shall first register with the board as a pharmacy intern on a form provided by the board prior to becoming so engaged as a pharmacy intern. This requirement shall apply to any person gaining practical experience within the Commonwealth whether for licensure in Virginia or in another state.~~

~~B. In order to be eligible to register as a pharmacy intern, an applicant shall meet at least one of the following criteria:~~

~~1. The applicant shall be enrolled in and have started course work in a professional degree program of a board-approved school of pharmacy. Such registration is only valid while the student is enrolled in the school of pharmacy and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist. An expiration date shall be assigned to the registration to cover the estimated time period for the student to complete the school program and pass the required examinations. If the student is no longer enrolled in the school program, takes a voluntary break from the program, or is otherwise not actively participating in the school program, except for regularly scheduled school breaks, the registration is no~~

longer valid and shall be returned to the board immediately;

2. The applicant is a graduate of a board approved school of pharmacy or a graduate of a foreign school of pharmacy, has established educational equivalency and proficiency in English by obtaining the FPGEC certificate, and desires to gain required practical experience required for licensure as a pharmacist. Such applicant shall provide documentation on a board approved form of current employment or an employment start date within 90 days in a pharmacy in Virginia with approval by the supervising pharmacist. An expiration date shall be assigned to cover the estimated time period needed to obtain the required practical experience hours and take the required examinations to become licensed as a pharmacist;

3. The applicant has already gained the required practical experience, but is an otherwise qualified applicant awaiting examination for licensure. A three-month expiration date shall be assigned to allow the applicant time to take required examinations; or

4. The applicant is an applicant for reactivation or reinstatement of a previously issued pharmacist license and is meeting board requirements for relicensure. An expiration date shall be assigned to reasonably cover the period of time necessary to meet the board requirements.

C. For documented, good cause shown, the executive director of the board may extend the expiration date of the intern registration upon submission of an application form approved by the board and payment of the initial application fee.

D. A pharmacy intern shall be supervised by a pharmacist who holds a current, unrestricted license and assumes full responsibility for the training, supervision and conduct of the intern.

E. The intern registration of a pharmacy student shall be valid only while the student is enrolled in a school of pharmacy. The registration card issued by the board shall be returned to the board upon failure to be enrolled.

F. Practical experience gained within any other state must be registered with and certified by the board of that state in order to be accepted or certified by this board. In the event that a state relies on the pharmacy school to certify the hours of experience, an affidavit from the pharmacy school certifying the hours of experience gained in the United States may be accepted in lieu of board certification.

G. All practical experience of the pharmacy intern shall be evidenced by an affidavit approved by the board, which shall be filed prior to or with the application for examination for licensure.

H. An applicant for licensure by endorsement may provide verification acceptable to the board of practical experience hours worked as a pharmacist in another state within the United States in lieu of prelicensure intern hours in order to meet the practical experience requirement.

I. A pharmacy intern shall notify the board in writing of any change in address of record within 14 days of such change.

18VAC110-20-50. ~~Curriculum and approved schools of pharmacy.~~ (Repealed.)

A. The following minimum educational requirements for the specified periods shall be recognized by the board for the purpose of licensure.

1. On and after June 1, 1936, but before June 1, 1964, the applicant for licensure shall have been graduated from a four-year course of study with a Bachelor of Science degree in pharmacy awarded.

2. On and after June 1, 1964, the applicant for licensure shall have been graduated from at least a five-year course of study with a Bachelor of Science degree in pharmacy or a Doctorate of Pharmacy degree awarded.

B. In order to be licensed as a pharmacist within this Commonwealth, the applicant shall have been granted the first professional degree from a program of a school of pharmacy which meets the requirements of § 54.1-3312 of the Code of Virginia.

18VAC110-20-60. ~~Content of the examination and grades required; limitation on admittance to examination.~~ (Repealed.)

A. Prior to admission to any examination required for licensure, the applicant shall have met all other requirements to include education and practical experience requirements, but in no case shall the applicant be admitted if grounds exist to deny licensure under § 54.1-3316 of the Code of Virginia.

B. The applicant shall achieve a passing score as determined by the board on the licensure examination which is approved by the board and which shall consist of an integrated examination of pharmacy practice, pharmacology, pharmacy mathematics, and such other subjects as are necessary to assure that the candidate possesses the necessary knowledge and skills to practice pharmacy.

C. When an applicant for licensure by examination fails to meet the passing requirements of the board approved integrated pharmacy examination on three occasions, he shall not be readmitted to the examination until he has completed an additional 1,000 hours of practical experience as a pharmacy intern as set forth in 18VAC110-20-40.

D. The applicant shall also achieve a passing score as determined by the board on an examination that tests the candidate's knowledge of federal and state laws related to pharmacy practice.

E. When an applicant fails to pass the law examination, he shall not be allowed to retake it for a period of 30 days.

F. If an applicant requests a testing accommodation for either examination based on a physical or mental impairment that substantially limits one or more major life activities, subject to the Americans with Disabilities Act, the board may approve a reasonable accommodation that does not compromise the security or integrity of the examination.

1. Supporting documentation shall be provided by the applicant to include the following to be considered for review:

a. A letter of request from the candidate that specifies the testing accommodation requested;

b. A written report of an evaluation (educational, psychological, or physical) within the preceding two years from a qualified professional that states a diagnosis of the disability, describes the disability, recommends specific accommodations, and provides justification that the accommodation is appropriate and necessary for the diagnosed disability. If the comprehensive evaluation was done more than two years ago and the condition is one that is not subject to change, the original evaluation report may be submitted along with a current letter from the qualified professional stating that there has been no change in the condition since the time of the evaluation; and

c. A written statement from the appropriate person at the applicant's school of pharmacy that describes any testing accommodations made while the student was enrolled, if applicable.

2. The applicant will be notified in writing of the decision. If the request for accommodation is granted, the approval information will be forwarded to the examination contractor and the form of the accommodation will be coordinated with the contractor.

18VAC110-20-70. ~~Requirements for foreign-trained applicants.~~ (Repealed.)

A. Applicants for licensure who were trained in foreign schools of pharmacy shall obtain the FPGEC certificate prior to being allowed to register as a pharmacy intern and gain required practical experience in Virginia.

B. After obtaining the FPGEC certificate, the applicant may apply for a pharmacy intern registration and shall fulfill the requirements for practical experience set forth in 18VAC110-20-30 and 18VAC110-20-40 before being admitted to examinations required by 18VAC110-20-60.

C. Applicants for licensure who were trained in foreign schools of pharmacy shall also complete and achieve passing scores on the examinations set forth in 18VAC110-20-60 before being licensed as a pharmacist.

18VAC110-20-75. ~~Registration for voluntary practice by out-of-state licensees.~~ (Repealed.)

Any pharmacist who seeks registration to practice on a voluntary basis pursuant to subdivision 12 of § 54.1-3301 of the Code of Virginia under the auspices of a publicly supported, all-volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice;

2. Provide a complete list of each state in which he has held a pharmacist license and a copy of any current license;

3. Provide the name of the nonprofit organization and the dates and location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with the provisions of subdivision 12 of § 54.1-3301 of the Code of Virginia.

18VAC110-20-80. ~~Renewal and reinstatement of license.~~ (Repealed.)

A. Pharmacist licenses expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee, renewal form, and statement of compliance with continuing education requirements.

B. A pharmacist newly licensed on or after October 1 shall not be required to renew that license until December 31 of the following year.

C. A pharmacist who fails to renew his license by the expiration date may renew his license at any time within one year of its expiration by submission of the renewal fee and late fee, renewal form, and statement of compliance with continuing education requirements.

D. A pharmacist who fails to renew his license for more than one year following expiration and who wishes to reinstate such license shall submit an application for reinstatement, pay the current renewal fee and a reinstatement fee, and submit documentation showing compliance with continuing education requirements. Reinstatement is at the discretion of the board and may be granted by the executive director of the board provided no grounds exist to deny said reinstatement.

E. A pharmacist who has been registered as inactive for more than one year must apply for reinstatement, submit documentation showing compliance with continuing education requirements, and pay the current year active renewal fee in order to resume active licensure.

F. In order to reactivate or reinstate a license to active status, a pharmacist who holds an inactive license, who has allowed

his license to lapse, or who has had his license suspended or revoked must submit evidence of completion of CEU's or hours equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 60 hours of CE.

G. A pharmacist whose license has been lapsed, in inactive status, or suspended or revoked for more than five years shall, as a condition of reinstatement in addition to 60 hours CE, take and receive a passing score on the board approved law examination and furnish acceptable documentation of one of the following:

1. Active pharmacy practice within the past five years as a properly licensed pharmacist in another state; or

2. Practical experience as a pharmacy intern registered with the board of at least 160 hours within six months immediately prior to being reinstated.

H. The practice of pharmacy without a current, active pharmacist license is unlawful and shall constitute grounds for disciplinary action by the board.

I. It shall be the duty and responsibility of each licensee to inform the board of his current address. A licensee shall notify the board within 14 days in writing or electronically of any change of an address of record. Properly updating address of record directly through the board's web based application or other approved means shall constitute lawful notification. All notices required by law or by these rules and regulations are deemed to be legally given when mailed to the address of record and shall not relieve the licensee of the obligation to comply.

18VAC110-20-90. Requirements for continuing education. (Repealed.)

A. A pharmacist shall be required to have completed a minimum of 1.5 CEUs or 15 contact hours of continuing pharmacy education in an approved program for each annual renewal of licensure. CEUs or hours in excess of the number required for renewal may not be transferred or credited to another year.

B. A pharmacy education program approved for continuing pharmacy education is:

1. One that is approved by the Accreditation Council for Pharmacy Education (ACPE);

2. One that is approved as a Category I Continuing Medical Education (CME) course, the primary focus of which is pharmacy, pharmacology, or drug therapy; or

3. One that is approved by the board in accordance with the provisions of 18VAC110-20-100.

C. The board may grant an extension pursuant to § 54.1-3314.1 E of the Code of Virginia. Any subsequent extension shall be granted only for good cause shown.

D. Up to two hours of the 15 hours required for annual renewal may be satisfied through delivery of pharmacy services as a pharmacist, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

E. Pharmacists are required to attest to compliance with CE requirements in a manner approved by the board at the time of their annual license renewal. Following each renewal period, the board may conduct an audit of the immediate past two years' CE documents to verify compliance with requirements. Pharmacists are required to maintain, for two years following renewal, the original certificates documenting successful completion of CE, showing date and title of the CE program or activity, the number of CEUs or contact hours awarded, and a certifying signature or other certification of the approved provider. Pharmacists selected for audit must provide these original documents to the board by the deadline date specified by the board in the audit notice.

18VAC110-20-100. Approval of continuing education programs. (Repealed.)

A. The board will approve without application or further review any program offered by an ACPE approved provider and will accept for credit certificates bearing the official ACPE logo and program number.

B. The board may approve an individual CE program under the following provisions:

1. An approved individual program is a course, activity, or lecture which includes subject matter related to the competency of the practice of pharmacy and which has been approved for CE credit by the board.

2. In order to receive approval for an individual program, the sponsor or provider must apply prior to the program offering on a form provided by the board. The information which must be provided shall include but not be limited to: name of provider, location, date and time of program, charges to participants, description of program content and objectives, credentials of speaker or author, method of delivery, evaluation procedure, evidence of a post assessment, credits requested, mechanism for recordkeeping, and any such information as the board deems necessary to assure quality and compliance.

3. The sponsor applying for board approval of an individual program must pay a fee as required in 18VAC110-20-20 C 12.

4. The board shall notify the provider or sponsor within 60 days following the receipt of a completed application of approval or disapproval of a program and the number of

credits which may be awarded. The board shall also assign an expiration date for approval of the program not to exceed two years from the date of approval.

5. The provider of an approved program shall provide to each participant who completes the required hours and passes the post-test a certification with the name of the provider, name of the participant, description of course and method of delivery, number of hours credited, date of completion, and program identification number.

6. The provider of an approved program shall maintain all records on that program, its participants, and hours awarded for a period of five years and shall make those records available to the board upon request.

7. The board shall periodically review and monitor programs. The provider of a CE program shall waive registration fees for a representative of the board for that purpose.

8. Any changes in the information previously provided about an approved program or provider must be submitted or the board may withdraw its approval. If a provider wants to give a live program more than once, all program dates must either be submitted on the original application or provided to the board in subsequent correspondence at least five days prior to giving the program.

Part III
Requirements for Pharmacy Technician Registration
(Repealed)

18VAC110-20-101. Application for registration as a pharmacy technician. (Repealed.)

A. Any person wishing to apply for registration as a pharmacy technician shall submit the application fee and an application on a form approved by the board.

B. In order to be registered as a pharmacy technician, an applicant shall provide evidence of the following:

1. Satisfactory completion of an approved training program; and

2. A passing score on a board approved examination.

C. In lieu of the requirements of subsection B of this section, an applicant may provide evidence of current PTCB certification.

D. A pharmacy technician trainee may perform tasks restricted to pharmacy technicians for no more than nine months without becoming registered as a pharmacy technician.

18VAC110-20-102. Criteria for approval for training programs. (Repealed.)

A. Any person wishing to apply for approval of a pharmacy technician training program shall submit the application fee and an application on a form approved by the board and meet the criteria established in this section.

B. The curriculum of a training program for pharmacy technicians shall include instruction in applicable, current laws and regulations and in the tasks that may be performed by a pharmacy technician to include the following or any other task restricted to pharmacy technicians in regulation:

1. The entry of prescription information and drug history into a data system or other recordkeeping system;

2. The preparation of prescription labels or patient information;

3. The removal of the drug to be dispensed from inventory;

4. The counting, measuring, or compounding of the drug to be dispensed;

5. The packaging and labeling of the drug to be dispensed and the repackaging thereof;

6. The stocking or loading of automated dispensing devices or other devices used in the dispensing process; and

7. The acceptance of refill authorization from a prescriber or his authorized agent provided there is no change to the original prescription.

C. Each program shall have a program director who shall be either (i) a pharmacist with a current license in any jurisdiction and who is not currently suspended or revoked in any jurisdiction in the United States; (ii) a pharmacy technician with at least one year of experience performing technician tasks who holds a current registration in Virginia or current PTCB certification and who is not currently suspended or revoked as a pharmacy technician in any jurisdiction; or (iii) other person approved and deemed qualified by the board to be a program director.

D. Instructors for the core components listed in subsection B of this section shall meet the requirements for the program director listed in subsection C of this section. The program director may serve as an instructor.

E. The length of the program shall be sufficient to prepare a program participant to sit for the board approved examination and demonstrate entry level competency.

F. The program shall maintain records of program participants either on site or at another location where the records are readily retrievable upon request for inspection. A program shall provide a certificate of completion to participants who successfully complete the program and provide verification of completion of the program for a participant upon request by the board. Records shall be maintained for two years from date of completion or termination of program.

G. The program shall report within 14 days any substantive change in the program to include a change in program name,

~~program director, instructors, name of institution or business if applicable, address, program content, length of program, or location of records.~~

~~H. A pharmacy technician training program approval expires after two years, after which the program may apply for renewal. For continued approval, the program shall submit the renewal application, renewal fee, and a self evaluation report on a form provided by the board at the time of renewal notification. Renewal of a program's approval is at the discretion of the board, and the decision to renew shall be based on documentation of continued compliance with the criteria set forth in this section.~~

18VAC110-20-103. ~~Examination.~~ (Repealed.)

~~A. The board shall approve one or more examinations to test entry level competency for pharmacy technicians. In order to be approved, a competency examination shall be developed in accordance with and meet the recognized acceptable test measurement standards of the Joint Technical Standards for Education and Psychological Testing (American Psychological Association, current edition), and shall be administered by an independent third party.~~

~~B. The board may contract with an examination service for the development and administration of a competency examination.~~

~~C. The board shall determine the minimum passing standard on the competency examination.~~

~~D. Any requests for testing accommodations under the Americans with Disabilities Act shall be in accordance with the provisions of 18VAC110-20-60 F.~~

18VAC110-20-104. ~~Address of record; maintenance of certificate.~~ (Repealed.)

~~A. It shall be the duty and responsibility of each pharmacy technician to inform the board of his current address. A pharmacy technician shall notify the board in writing or electronically of any change of an address of record within 14 days. Properly updating address of record directly through the board's web-based application or other approved means shall constitute lawful notification. All notices required by law or by these rules and regulations are deemed to be legally given when mailed to the address of record and shall not relieve the registrant of the obligation to comply.~~

~~B. A pharmacy technician shall maintain his current registration certificate at his principal place of practice available for inspection upon request. A pharmacy technician who does not have a principal place of practice may maintain it at any pharmacy in which he practices or his address of record.~~

18VAC110-20-105. ~~Renewal and reinstatement of registration.~~ (Repealed.)

~~A. Pharmacy technician registrations expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee and renewal form. A pharmacy technician newly registered on or after July 1 shall not be required to renew that registration until December 31 of the following year. Failure to receive the application for renewal shall not relieve the pharmacy technician of the responsibility for renewing the registration by the expiration date.~~

~~B. A pharmacy technician who fails to renew his registration by the expiration date may renew his registration at any time within one year of its expiration by submission of the renewal fee and late fee, renewal form, and attestation of having obtained required continuing education.~~

~~C. A pharmacy technician who fails to renew his registration for more than one year following expiration and who wishes to reinstate such registration shall submit an application for reinstatement, pay the current renewal fee and a reinstatement fee, and submit documentation showing compliance with continuing education requirements. Reinstatement is at the discretion of the board and may be granted by the executive director of the board provided no grounds exist to deny said reinstatement. Conducting tasks associated with a pharmacy technician with a lapsed registration shall be illegal and may subject the registrant to disciplinary action by the board.~~

~~D. A person who fails to reinstate a pharmacy technician registration within five years of expiration, shall not be eligible for reinstatement and shall repeat an approved training program and repeat and pass the examination, or hold current PTCB certification, before applying to be reregistered.~~

18VAC110-20-106. ~~Requirements for continued competency.~~ (Repealed.)

~~A. A pharmacy technician shall be required to have completed a minimum of 0.5 CEUs or five contact hours of approved continuing education for each annual renewal of registration. Hours in excess of the number required for renewal may not be transferred or credited to another year.~~

~~B. An approved continuing education program shall meet the requirements as set forth in subsection B of 18VAC110-20-90 or subsection B of 18VAC110-20-100.~~

~~C. Upon written request of a pharmacy technician, the board may grant an extension of up to one year in order for the pharmacy technician to fulfill the continuing education requirements for the period of time in question. The granting of an extension shall not relieve the pharmacy technician from complying with current year requirements. Any subsequent extension shall be granted for good cause shown.~~

~~D. Up to one hour of the five hours required for annual renewal may be satisfied through delivery of pharmacy services as a pharmacy technician, without compensation, to~~

~~low income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.~~

~~E. Original certificates showing successful completion of continuing education programs shall be maintained by the pharmacy technician for a period of two years following the renewal of his registration. The pharmacy technician shall provide such original certificates to the board upon request in a manner to be determined by the board.~~

Part ~~IV~~ II
Pharmacies

18VAC110-20-110. Pharmacy permits generally.

A. A pharmacy permit shall not be issued to a pharmacist to be simultaneously in charge of more than two pharmacies.

B. Except in an emergency, a permit holder shall not require a pharmacist to work longer than 12 continuous hours in any work day and shall allow at least six hours of off-time between consecutive shifts. A pharmacist working longer than six continuous hours shall be allowed to take a 30-minute break.

C. The ~~pharmacist-in-charge (PIC)~~ PIC or the pharmacist on duty shall control all aspects of the practice of pharmacy. Any decision overriding such control of the PIC or other pharmacist on duty shall be deemed the practice of pharmacy and may be grounds for disciplinary action against the pharmacy permit.

D. A pharmacist shall not be eligible to serve as PIC until after having obtained a minimum of two years of experience practicing as a pharmacist in Virginia or another jurisdiction in the United States. The board may grant an exception to the minimum number of years of experience for good cause shown.

~~D.~~ E. When the PIC ceases practice at a pharmacy or no longer wishes to be designated as PIC, he shall immediately return the pharmacy permit to the board indicating the effective date on which he ceased to be the PIC.

~~E.~~ F. Although not required by law or regulation, an outgoing PIC shall have the opportunity to take a complete and accurate inventory of all ~~Schedule~~ Schedules II through V controlled substances on hand on the date he ceases to be the PIC, unless the owner submits written notice to the board showing good cause as to why this opportunity should not be allowed.

~~F.~~ G. A PIC who is absent from practice for more than 30 consecutive days shall be deemed to no longer be the PIC. Pharmacists-in-charge having knowledge of upcoming absences for longer than 30 days shall be responsible for notifying the board and returning the permit. For unanticipated absences by the PIC, which exceed 15 days with no known return date within the next 15 days, the owner shall immediately notify the board and shall obtain a new PIC.

~~G.~~ H. An application for a permit designating the new PIC shall be filed with the required fee within 14 days of the original date of resignation or termination of the PIC on a form provided by the board. It shall be unlawful for a pharmacy to operate without a new permit past the 14-day deadline unless the board receives a request for an extension prior to the deadline. The executive director for the board may grant an extension for up to an additional 14 days for good cause shown.

~~H.~~ I. Only one pharmacy permit shall be issued to conduct a pharmacy occupying the same designated prescription department space. A pharmacy shall not engage in any other activity requiring a license or permit from the board, such as manufacturing or wholesale-distributing, out of the same designated prescription department space.

~~I.~~ J. Before any permit is issued, the applicant shall attest to compliance with all federal, state, and local laws and ordinances. A pharmacy permit shall not be issued to any person to operate from a private dwelling or residence after September 2, 2009.

18VAC110-20-112. Supervision of pharmacy technicians.

A. A pharmacist shall determine the number of pharmacy interns, pharmacy technicians, and pharmacy technician trainees he can safely and competently supervise at one time; however, no pharmacist shall supervise more than four persons performing the duties of a pharmacy technician at one time.

B. In addition to the acts restricted to a pharmacist in § 54.1-3320 A of the Code of Virginia, a pharmacist shall provide personal supervision of compounding of extemporaneous preparations by pharmacy technicians.

18VAC110-20-140. New pharmacies, acquisitions, and changes to existing pharmacies.

A. Any person wishing to open a new pharmacy, engage in the acquisition of an existing pharmacy, change the location of an existing pharmacy, move the location or make structural changes to an existing prescription department, or make changes to a previously approved security system shall file an application with the board.

B. In the acquisition of an existing pharmacy, if prescription records are to be accessible to anyone for purposes other than for continuity of pharmacy services at substantially the same level offered by the previous owner or for the necessary transfer of prescription records, the owner of the pharmacy acquiring the records shall disclose such information in writing to each patient 14 days prior to the acquisition. Such

release of prescription records shall be allowed only to the extent authorized by § 32.1-127.1:03 of the Code of Virginia.

C. Although a closing inventory is not required, a complete and accurate inventory shall be taken of all Schedules II through V controlled substances on hand in accordance with § 54.1-3404 of the Code of Virginia on the date the pharmacist first engages in business under the new ownership. Inventories associated with any change in PIC shall also be performed in accordance with 18VAC110-20-110.

~~C.~~ D. The proposed location or structural changes shall be inspected by an authorized agent of the board prior to issuance of a permit.

1. Pharmacy permit applications ~~which~~ that indicate a requested inspection date~~,~~ or requests ~~which~~ that are received after the application is filed~~,~~ shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

2. Requested inspection dates ~~which~~ that do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

3. At the time of the inspection, the dispensing area shall comply with 18VAC110-20-150, 18VAC110-20-160, 18VAC110-20-170, 18VAC110-20-180, and 18VAC110-20-190.

4. If an applicant substantially fails to meet the requirements for issuance of a permit and a reinspection is required~~,~~ or if the applicant is not ready for the inspection on the established date and fails to notify the inspector or the board at least 24 hours prior to the inspection, the applicant shall pay a reinspection fee as specified in 18VAC110-20-20 prior to a reinspection being conducted.

~~D.~~ E. Drugs shall not be stocked within the proposed pharmacy or moved to a new location until approval is granted by the inspector or board staff.

~~E.~~ F. Once the permit is issued, prescription drugs may not be stocked earlier than two weeks prior to the designated opening date. Once prescription drugs have been placed in the pharmacy, a pharmacist shall be present on a daily basis to ensure the safety and integrity of the drugs. If there is a change in the designated opening date, the pharmacy shall notify the board office, and a pharmacist shall continue to be on site on a daily basis.

G. If the pharmacy is not operational within 90 days from the date the permit is issued, the board shall rescind the pharmacy permit unless an extension is granted for good cause shown.

18VAC110-20-150. Physical standards for all pharmacies.

A. The prescription department shall not be less than 240 square feet. The patient waiting area or the area used for counseling, devices, cosmetics, and proprietary medicines shall not be considered a part of the minimum 240 square feet. The total area shall be consistent with the size and scope of the services provided.

B. Access to stock rooms, rest rooms, and other areas other than an office that is exclusively used by the pharmacist shall not be through the prescription department. A rest room in the prescription department, used exclusively by pharmacists and personnel assisting with dispensing functions, may be allowed provided there is another rest room outside the prescription department available to other employees and the public. This subsection shall not apply to prescription departments in existence prior to November 4, 1993.

C. The pharmacy shall be constructed of permanent and secure materials. Trailers or other moveable facilities or temporary construction shall not be permitted.

D. The entire area of the location of the pharmacy practice, including all areas where drugs are stored, shall be well lighted and well ventilated; the proper storage temperature shall be maintained to meet USP-NF specifications for drug storage.

E. The prescription department counter work space shall be used only for the compounding and dispensing of drugs and necessary ~~record keeping~~ recordkeeping.

F. A sink with hot and cold running water shall be within the prescription department. A pharmacy issued a limited-use permit that does not stock prescription drugs as part of its operation is exempt from this requirement.

G. Adequate refrigeration facilities equipped with a monitoring thermometer for the storage of drugs requiring cold storage temperature shall be maintained within the prescription department~~,~~ if the pharmacy stocks such drugs.

H. A pharmacy stocking drugs requiring cold storage temperature shall record the temperature daily and adjust the thermostat as necessary to ensure an appropriate temperature range. The record shall be maintained manually or electronically for a period of two years.

18VAC110-20-180. Security system.

A. A device for the detection of breaking shall be installed in each prescription department of each pharmacy. The installation and the device shall be based on accepted alarm industry standards~~,~~ and shall be subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.

2. The device shall have at least one hard-wired communication method, be monitored in accordance with accepted industry standards, maintained in operating order, have an auxiliary source of power, and be capable of

sending an alarm signal to the monitoring entity when breached if the communication line is not operational.

3. The device shall fully protect the prescription department and shall be capable of detecting breaking by any means when activated.

4. Access to the alarm system for the prescription department area of the pharmacy shall be restricted to the pharmacists working at the pharmacy, except for access by other persons in accordance with 18VAC110-20-190 B 2, and the system shall be activated whenever the prescription department is closed for business.

5. The alarm system shall include a feature by which any breach in the alarm shall be communicated by the monitoring entity to the PIC or a pharmacist working at the pharmacy.

B. Exceptions to provisions in this section:

1. Alarm systems approved prior to November 4, 1993, will be deemed to meet the requirements of subdivisions A 1, A 2, and A 3 of this section, provided that no structural changes are made in the prescription department, that no changes are made in the security system, that the prescription department is not closed while the rest of the business remains open, and that a breaking and loss of drugs does not occur. If a breaking with a loss of drugs occurs, the pharmacy shall upgrade the alarm to meet the current standards and shall file an application with the board in accordance with 18VAC110-20-140 A within 14 days of the breaking.

2. If the prescription department was located in a business with extended hours prior to November 4, 1993, and had met the special security requirements by having a floor to ceiling enclosure, a separately activated alarm system shall not be required.

3. This section shall not apply to pharmacies ~~which~~ that are open and staffed by pharmacists 24 hours a day. If the pharmacy changes its hours or if it must be closed for any reason, the PIC or owner must immediately notify the board, file an application in accordance with 18VAC110-20-140 A, and have installed prior to closing~~,~~ a security system that meets the requirements of subdivisions A 1 through A 4 of this section.

18VAC110-20-200. Storage of drugs, devices, and controlled paraphernalia; expired drugs.

A. Prescriptions awaiting delivery. Prescriptions prepared for delivery to the patient may be placed in a secured area outside of the prescription department, not accessible to the public, where access to the prescriptions is restricted to individuals designated by the pharmacist. With the permission of the pharmacist, the prepared prescriptions may be transferred to the patient at a time when the pharmacist is not on duty. If a prescription is delivered at a time when the pharmacist is not on duty, written procedures shall be established and followed by the pharmacy ~~which~~ that detail security of the dispensed prescriptions and a method of compliance with counseling requirements of § 54.1-3319 of the Code of Virginia. Additionally, a log shall be made and maintained of all prescriptions delivered to a patient when a pharmacist is not present to include the patient's name, prescription ~~number(s)~~ number, date of delivery, and ~~the~~ signature of the person receiving the prescription. Such log shall be maintained for a period of one year.

B. Dispersion of Schedule II drugs. Schedule II drugs shall either be dispersed with other schedules of drugs or shall be maintained within a securely locked cabinet, drawer, or safe or maintained in a manner that combines the two methods for storage. The cabinet, drawer, or safe may remain unlocked during hours that the prescription department is open and a pharmacist is on duty.

C. Safeguards for controlled paraphernalia and Schedule VI medical devices. Controlled paraphernalia and Schedule VI medical devices shall not be placed in an area completely removed from the prescription department whereby patrons will have free access to such items or where the pharmacist cannot exercise reasonable supervision and control.

D. Expired, or otherwise adulterated or misbranded drugs; security. Any drug ~~which~~ that has exceeded the expiration date~~,~~ or is otherwise adulterated or misbranded~~,~~ shall not be dispensed or sold; it shall be separated from the stock used for dispensing. Expired prescription drugs shall be maintained in a designated area within the prescription department until proper disposal.

18VAC110-20-211. Disposal of drugs by authorized collectors.

Any narcotic treatment program, hospital~~,~~ or clinic with an on-site pharmacy, or pharmacy ~~wishing to accept for return~~ that accepts a previously dispensed drug for the purpose of destruction shall first be authorized by the DEA as a collector. A collector so authorized may receive drugs from an ultimate user, a person lawfully entitled to dispose of an ultimate user decedent's property, or a long-term care facility on behalf of an ultimate user who resides or has resided at that facility ~~shall first be authorized by the DEA as a collector~~. The process used to collect and destroy drugs, along with any required recordkeeping, shall comply with applicable federal and state law.

1. Prior to collecting drugs, an authorized collector shall submit in writing to the board:

a. The name, address, and license number, if applicable, of the facility;

b. The intended method or methods of collection (i.e., collection receptacle or mail-back program); and

c. Signature of PIC or medical director of a narcotic treatment program.

2. If an authorized collector chooses to cease acting as a collector, the PIC or medical director shall notify the board within 30 days.

3. A narcotic treatment program that does not have an in-house pharmacy shall obtain a controlled substance registration.

Part ~~V~~ III
Nuclear Pharmacies

18VAC110-20-220. General requirements for pharmacies providing radiopharmaceutical services.

A. Nuclear pharmacies shall comply with standards and requirements of the Nuclear Regulatory Commission ~~(NRC)~~ and the Virginia Department of Health related to the staffing and operation of the facility.

B. Radiopharmaceuticals are to be dispensed only upon an order from a prescriber authorized to possess, use, and administer radiopharmaceuticals.

1. Orders shall originate at an institution or ~~healthcare~~ health care facility licensed to receive and possess radiopharmaceuticals~~,~~ and must contain all necessary information relative to the radiopharmaceutical, activity, time of calibration, and any special preparation or delivery instructions.

2. Orders for radiopharmaceuticals may be transmitted orally, by ~~fax~~ facsimile (fax), or by electronic transmission by an authorized agent of the prescriber. If the fax or electronic transmission of the authorized agent is pursuant to an oral order from the prescriber, the transmitted document need not include the prescriber's signature~~,~~ but must include the name of the agent.

C. The immediate outside container of a radioactive drug to be dispensed shall also be labeled in accordance with requirements of § 54.1-3410.1 B of the Code of Virginia.

D. The immediate inner container shall be labeled with~~:~~ (i) the standard radiation symbol~~;~~, (ii) the words "Caution--Radioactive Material,"~~;~~ and (iii) the serial number assigned to the order.

E. Nuclear pharmacies may redistribute approved radioactive drugs if the pharmacy does not process the radioactive drugs in any manner nor violate the product packaging.

Part ~~VI~~ IV
Drug Inventory and Records

18VAC110-20-240. Manner of maintaining records, prescriptions, inventory records.

A. Each pharmacy shall perform and maintain the inventories and records of drugs as follows:

1. Inventories and records of all drugs listed in Schedules I and II shall be maintained separately from all other records of the pharmacy. Inventories of drugs in Schedules I and II shall be performed by physically counting the drugs. Each pharmacy shall maintain a perpetual inventory of all Schedule II drugs received and dispensed~~, with~~ that accurately indicates the physical count of each Schedule II drug "on-hand" at the time of performing the inventory. The perpetual inventory shall include a reconciliation of each Schedule II drug at least monthly with a written explanation for any difference between the physical count and the theoretical count. Electronic monitoring at the pharmacy or by another entity that provides alerts for discrepancies between drugs received and drugs dispensed is acceptable provided such alerts are reviewed at least monthly.

2. Inventories and records of drugs listed in Schedules III, IV, and V may be maintained separately or with records of Schedule VI drugs but shall not be maintained with other records of the pharmacy. Inventories of drugs in Schedules III, IV, and V may be performed by estimating the count of drugs in Schedules III, IV, and V unless the container contains greater than 1,000 tablets or capsules or there has been a theft or any other unusual loss of drug and the exact kind and quantity of the drug loss is unknown.

3. All executed order forms, prescriptions, and inventories of ~~Schedule~~ Schedules II through V drugs shall be maintained at the same address as the stock of drugs to which the records pertain. If authorized by DEA, other records pertaining to ~~Schedule~~ Schedules II through V drugs, such as invoices, may be maintained in an off-site database or in secured storage. All records in off-site storage shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

4. All inventories required by § 54.1-3404 of the Code of Virginia shall be signed and dated by the person taking the inventory and shall indicate whether the inventory was taken prior to the opening of business or after close of business. A 24-hour pharmacy with no opening or closing of business shall clearly document whether the receipt or distribution of drugs on the inventory date occurred before or after the inventory was taken.

5. Invoices or other records showing receipts of Schedule VI drugs shall be maintained~~,~~ but may be stored in an electronic database or record as an electronic image that

provides an exact, clearly legible~~,~~ image of the document or in secured storage either on site or off site. All records in off-site storage or database shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

6. All records required by this section shall be filed chronologically and maintained for a period of not less than two years from the date of transaction.

B. Prescriptions.

1. A hard copy prescription shall be placed on file for every initial prescription dispensed and be maintained for two years from the date of last refill. All prescriptions shall be filed chronologically by date of initial dispensing or by date of initial entry into the automated data processing system in compliance with 18VAC110-20-250 if such a system is employed by the pharmacy.

2. Schedule II drugs. Prescriptions for Schedule II drugs shall be maintained in a separate prescription file.

3. ~~Schedule~~ Schedules III ~~through~~, IV, and V drugs. Prescriptions for ~~Schedule~~ Schedules III ~~through~~, IV, and V drugs shall be maintained either in a separate prescription file for drugs listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescriptions of the pharmacy. Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than one inch high and filed in the prescription file for drugs listed in the usual consecutively numbered prescription file for Schedule VI drugs. However, if a pharmacy employs an automated data processing system or other electronic recordkeeping system for prescriptions ~~which~~ that permits identification by prescription number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, then the requirement to mark the hard copy prescription with a red "C" is waived.

C. Chart orders.

1. A chart order written for a patient in a hospital or long-term care facility, a patient receiving home infusion services, or a hospice patient pursuant to § 54.1-3408.01 A of the Code of Virginia shall be exempt from having to contain all required information of a written prescription provided:

a. This information is contained in other readily retrievable records of the pharmacy; and

b. The pharmacy maintains and complies with a current policy and procedure manual that sets out where this information is maintained ~~and~~, how to retrieve it, and the minimum requirements for chart orders consistent with state and federal law and accepted standard of care.

2. A chart order may serve as the hard copy prescription for those patients listed in subdivision 1 of this subsection. When a chart order is intended for out-patient dispensing, it shall comply with requirements for a prescription in 18VAC110-20-286.

3. Requirements for filing of chart orders.

a. Chart orders shall be filed chronologically by date of initial dispensing with the following exception: If dispensing data can be produced showing a complete audit trail for any requested drug for a specified time period and each chart order is readily retrievable upon request, chart orders may be filed using another method. Such alternate method shall be clearly documented in a current policy and procedure manual.

b. If a single chart order contains both an order for a Schedule II drug and one or more orders for a drug in another schedule, where the Schedule II drug is not floor stocked~~,~~ but is dispensed from the pharmacy pursuant to this order for the specific patient, the original order must be filed with records of dispensing of Schedule II drugs and a copy of the order placed in the file for other schedules.

Part ~~VII~~ V
Prescription Order and Dispensing Standards

18VAC110-20-270. Dispensing of prescriptions; certification of completed prescriptions; ~~supervision of pharmacy technicians~~.

A. In addition to the ~~acts restricted to a pharmacist in § 54.1-3320 A of the Code of Virginia, a pharmacist shall provide personal supervision of compounding of extemporaneous preparations by pharmacy technicians. B. A pharmacist shall determine the number of pharmacy interns, pharmacy technicians, and pharmacy technician trainees he can safely and competently supervise at one time; however, no pharmacist shall supervise more than four persons acting as pharmacy technicians at one time~~ requirements in § 54.1-3408.01 of the Code of Virginia for an oral prescription or written prescription, including those transmitted via facsimile or electronically, a prescription shall include a quantity or duration of the order by which the pharmacist can calculate the authorized quantity using directions for use. Except for prescriptions transmitted electronically in compliance with 18VAC110-20-285, written prescriptions shall also include the prescriber's manual signature.

~~C.~~ B. After the prescription has been prepared and prior to the delivery of the order, a pharmacist shall inspect the prescription product to verify its accuracy in all respects~~,~~ and place his initials on the record of dispensing as a certification of the accuracy of~~,~~ and the responsibility for~~,~~ the entire transaction. If more than one pharmacist is involved in verifying the accuracy of the prescription product, a record shall be maintained identifying the date of dispensing, each

pharmacist involved in the process, and the individual task for which ~~he~~ each pharmacist is responsible for verifying the accuracy. Such record showing verification of accuracy shall be maintained on a pharmacy record and, if necessary, an alternate record consistent with 18VAC110-20-255 for the required time period of two years~~,~~ unless otherwise specified in regulation. If the dispensing involves central or remote processing, records of pharmacist verification shall be maintained in a manner consistent with 18VAC110-20-276 and 18VAC110-20-515.

~~D.~~ C. If a pharmacist declines to fill a prescription for any reason other than the unavailability of the drug prescribed, he shall record on the back of the prescription the word "declined"; the name, address, and telephone number of the pharmacy; the date filling of the prescription was declined; and the signature of the pharmacist.

~~E.~~ D. If a pharmacist determines from a prescriber or by other means, including the use of his professional judgment, that a prescription presented for dispensing is a forgery, the pharmacist ~~shall not~~ may refuse to return the forged prescription to the person presenting it. The forged prescription may be given to a law-enforcement official investigating the forgery~~;~~, or it shall be retained for a minimum of 30 days before destroying it~~,~~ in the event it is needed for an investigative or other legitimate purpose.

~~F.~~ E. An on-hold prescription shall be entered into the automated data processing system if such system is employed by the pharmacy, and the pharmacist on-duty shall verify the accuracy of the data entry at that time. The pharmacist subsequently dispensing the on-hold prescription on a future date shall, at a minimum, conduct a prospective drug review consistent with § 54.1-3319 A of the Code of Virginia. If an on-hold prescription is returned to a patient prior to the initial dispensing of the drug, the pharmacist shall delete the entry in the automated data processing system.

F. A pharmacy may use a drop box for the collection of written prescriptions and refill requests. The drop box shall be located in a visible area within the permitted facility and shall be locked at all times with access to the items placed in the drop box restricted to pharmacists practicing at the pharmacy or an authorized pharmacy technician practicing at the pharmacy when a pharmacist is on duty. The drop box shall be constructed in a manner to prevent the theft or loss of a written prescription or confidential information and shall be bolted to the floor or a fixed structure. Pharmacists shall in some manner inform the public that containers left in a drop box for refill should not contain unused drugs.

18VAC110-20-280. Transmission of a prescription order by facsimile ~~machine~~ device.

A. Unless otherwise prohibited by federal law, prescription orders for ~~Schedule~~ Schedules III through VI drugs may be transmitted to pharmacies by facsimile (fax) device ~~(FAX)~~ upon the following conditions:

1. The prescription shall be faxed only to the pharmacy of the patient's choice.

2. A valid faxed prescription shall contain all required information for a prescription. A written prescription shall include the prescriber's signature.

3. An authorized agent, as defined in § 54.1-3408.01 C of the Code of Virginia, may transmit an oral prescription by facsimile and shall record on the faxed prescription the agent's full name and wording that clearly indicates that the prescription being transmitted is an oral prescription.

4. A faxed prescription shall be valid only if faxed from the prescriber's practice location, except in the following situations:

a. Forwarding a faxed chart order from a long-term care facility or from a hospice, including a home hospice;

b. Faxing an oral prescription by authorized agent under the conditions set forth in subdivision 3 of this subsection; or

c. Forwarding a written prescription by an authorized agent from a long-term care facility, provided the provider pharmacy maintains written procedures for such transactions~~,~~ and provided the original prescription is obtained by the provider pharmacy within seven days of dispensing. The original prescription shall be attached to the faxed copy.

5. The following additional information shall be recorded on the faxed prescription:

a. The date that the prescription was faxed;

b. The printed name, address, phone number, and fax number of the authorized prescriber; and

c. The institution, if applicable, from which the prescription was faxed, including address, phone number, and fax number.

B. Prescription orders for Schedule II drugs may only be faxed for information purposes and may not serve as the original written prescription authorizing dispensing, except for orders to be administered to long-term care facility and home infusion patients in accordance with § 54.1-3408.01 B of the Code of Virginia and except for prescriptions written for a Schedule II narcotic substance for patients residing in a hospice certified by Medicare under Title XVIII or licensed by the state, which may include home hospice. The prescriber shall note on the prescription if the patient is a hospice patient, and the prescription shall meet all requirements for a written prescription, including the prescriber's manual signature.

C. If the faxed prescription is of such quality that the print will fade and not remain legible for the required retention period, the receiving pharmacist shall copy or transcribe the faxed prescription on paper of permanent quality.

D. Authorizations for refills may be faxed by the prescriber to the pharmacy provided the authorization includes patient name, address, drug name and strength, quantity, directions for use, prescriber's name, prescriber's manual signature or agent's name, and date of authorization.

18VAC110-20-290. Dispensing of Schedule II drugs.

A. A prescription for a Schedule II drug shall be dispensed in good faith but in no case shall it be dispensed more than six months after the date on which the prescription was issued.

B. A prescription for a Schedule II drug shall not be refilled except as authorized under the conditions for partial dispensing as set forth in 18VAC110-20-310.

C. In case of an emergency situation, a pharmacist may dispense a drug listed in Schedule II upon receiving oral authorization of a prescribing practitioner~~,~~ provided that:

1. The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period;

2. The prescription shall be immediately reduced to writing by the pharmacist and shall contain all information required in § 54.1-3410 of the Drug Control Act, except for the signature of the prescribing practitioner;

3. If the pharmacist does not know the practitioner, ~~he~~ the pharmacist shall make a reasonable effort to determine that the oral authorization came from a practitioner using ~~his~~ the practitioner's phone number as listed in the telephone directory or other good-faith efforts to ensure the practitioner's identity; and

4. Within seven days after authorizing an emergency oral prescription, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of § 54.1-3410 of the Drug Control Act, the prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail postmarked within the seven-day period~~,~~ or transmitted as an electronic prescription in accordance with federal law and regulation to include annotation of the electronic prescription with the original authorization and date of the oral order. Upon receipt, the dispensing pharmacist shall attach the paper prescription to the oral emergency prescription, which had earlier been reduced to writing. The pharmacist shall notify the nearest office of the Drug Enforcement Administration and the board if the prescribing practitioner fails to deliver a written prescription to ~~him~~ the pharmacist. Failure of the pharmacist to do so shall void the authority conferred by this subdivision to dispense without a written prescription of a prescribing practitioner.

D. When presented a prescription written for a Schedule II controlled substance, a pharmacist may add or correct the patient's address upon verification, correct the patient's name upon verification, or add the prescriber's DEA registration number to the prescription. The pharmacist may add or change the dosage form, drug strength, directions for use, drug quantity, or issue date only after oral consultation directly with and agreement of the prescriber. Such consultations and corresponding changes shall be noted by the pharmacist on the prescription. The pharmacist shall not add or change the prescriber's signature or make changes to the controlled substance prescribed, except for dispensing therapeutically equivalent drugs as permitted by law.

18VAC110-20-355. Pharmacy repackaging of drug; records required; labeling requirements.

A. Pharmacies in which bulk reconstitution of injectable, bulk compounding, or the repackaging or prepackaging of drugs is performed shall maintain adequate control records for a period of one year or until the expiration, whichever is greater. The records shall show the name of the ~~drug(s)~~ drugs used; strength, if any; date repackaged; quantity prepared; initials of the pharmacist verifying the process; the assigned lot or control number; the manufacturer's or distributor's name and lot or control number; and an expiration date.

B. The drug name; strength, if any; the assigned lot or control number or the manufacturer's or distributor's name and lot or control number; and an appropriate expiration date determined by the pharmacist in accordance with USP guidelines shall appear on any subsequently repackaged or reconstituted units.

C. Repackaging of drugs shall be performed in compliance with USP-NF standards.

~~C.~~ D. Pharmacies using automated counting devices or dispensers in which drugs are removed from manufacturer's original packaging and placed in bulk bins shall comply with the following requirements:

1. A bin filling record shall be maintained~~,~~ manually or in a computerized record for a period of one year from date of filling from which information can be readily retrieved~~,~~ for each bin including:

a. The drug name and strength, if any;

b. The name of the manufacturer or distributor;

c. Manufacturer's control or lot ~~number(s)~~ numbers and expiration date for all lots placed into the bin at the time of filling;

d. Any assigned lot number;

e. An expiration date determined according to USP guidelines for repackaging;

f. The date of filling; and

g. The pharmacist's initials verifying the accuracy of the process.

2. If more than one lot is added to a bin at the same time, the lot ~~which~~ that expires first shall be used to determine the expiration date if shorter than a calculated date based on USP guidelines.

3. Each bin shall be labeled in such a manner as to cross-reference the information on the filling record with the correct expiration date.

4. If only one lot is added to a bin at one time, but a subsequent lot may be added before the first has cleared, the automated device shall be constructed to reasonably dispense the first lot before the second lot is dispensed, and the expiration date on the bin's label shall reflect the expiration date assigned to the earlier lot.

5. In the event of a drug recall involving one of multiple lots placed in a bin of an automated counting device in the last three months or if a recalled drug is known to remain in the bin, all drugs shall be removed from the bin and not used for patient care. The removal of drugs from the bin is not required if:

a. The technology of the automated counting device can ensure drugs in a particular lot have been cleared; or

b. The bin has been "run dry," with a record made of the "run dry" date, since the addition of the recalled lot number in which all drugs were completely removed prior to filling with a subsequent lot number.

6. An automated counting device shall be cleaned and maintained in accordance with recommended manufacturer guidelines and specifications.

~~D.~~ E. A pharmacy may return a dispensed drug to stock for redispensing that has never left the pharmacy premises or the control of the pharmacy delivery agent pursuant to § 54.1-3411.1 A 3 of the Code of Virginia under the following conditions:

1. An expiration date shall be placed on the label prior to returning the drug to stock. In the absence of stability data to the contrary, the date on the label may not exceed the expiration date on the manufacturer's container or one year from the date the drug was originally dispensed and placed in the prescription vial, whichever date is earlier.

2. The restocked drug shall be used to fill the next prescription received for that product. In the event that the drug is not dispensed prior to the new assigned expiration date, it shall be removed from working stock as expired~~,~~ and disposed of in accordance with 18VAC110-20-210.

3. If there is no lot number on the label of a drug returned to stock or on the prescription records that can be cross-referenced from the prescription label, the drug shall be removed from stock upon any recall of that drug product and returned to the manufacturer or otherwise disposed of in accordance with 18VAC110-20-210.

18VAC110-20-390. Kickbacks, fee-splitting, interference with supplier.

A. A ~~pharmacist~~ pharmacy shall not solicit or foster prescription practice with a prescriber of drugs or any other person providing for rebates, ~~"~~kickbacks,~~"~~ fee-splitting, or special charges in exchange for prescription orders ~~unless fully disclosed in writing to the patient and any third party payor~~.

B. A ~~pharmacist~~ pharmacy shall not interfere with the patient's right to choose his supplier of medication or cooperate with any person ~~or persons~~ in denying a patient the opportunity to select his supplier of prescribed medications.

18VAC110-20-425. Robotic pharmacy systems.

A. Consistent with 18VAC110-20-420, a pharmacy providing services to a hospital or a long-term care facility and operating a robotic pharmacy system that dispenses drugs in ~~bar-coded~~ barcoded unit dose or compliance packaging is exempted from 18VAC110-20-270 C, provided the accuracy of the final dispensed prescription product complies with a written quality assurance plan and requirements of this chapter. The following requirements for operation of a robotic pharmacy system shall apply:

1. Pharmacists shall review for accuracy and appropriateness of therapy all data entry of prescription orders into the computer operating the system.

2. The packaging, repackaging, stocking, and restocking of the robotic pharmacy system shall be performed by pharmacy technicians or pharmacists.

3. Pharmacists shall verify and check for the accuracy of all drugs packaged or repackaged for use by the robot by a visual check of both labeling and contents prior to stocking the drugs in the robotic pharmacy system. A repackaging record shall be maintained in accordance with 18VAC110-20-355 A, and the verifying pharmacist shall initial the record. Packaging and labeling, including the appropriate beyond-use date, shall conform to requirements of this chapter and current USP-NF standards.

4. A written policy and procedure must be maintained and complied with and shall include at a minimum~~,~~ procedures for ensuring:

a. Accurate packaging and repackaging of all drugs for use in the robotic pharmacy system, to include properly labeled barcodes, and method for ensuring pharmacist

verification of all packaged and repacked drugs compliant with this chapter and assigned barcodes;

b. Accurate stocking and restocking of the robotic pharmacy system;

c. Removing expired drugs;

d. Proper handling of drugs that may be dropped by the robotic pharmacy system;

e. Performing routine maintenance of robotic pharmacy system as indicated by manufacturer's schedules and recommendations;

f. Accurate dispensing of drugs via robotic pharmacy system for cart fills, first doses, and cart fill updates during normal operation and during any scheduled or unscheduled downtime;

g. Accurate recording of any scheduled or unanticipated downtime with an explanation of the problem to include the time span of the downtime and the resolution;

~~g.~~ h. Appropriately ~~investigating, identifying and correcting~~ performing a root cause analysis to investigate, identify, and correct sources of discrepancies or errors associated with the robotic pharmacy system; and

~~h.~~ i. Maintaining quality assurance reports.

~~5. Pharmacists shall perform a daily random check of medications or compliance packaging picked by the robot for 5.0% of all patients' bins and 5.0% of all first doses or cart updates. Documentation of this check shall include the pharmacist's initials for each medication checked and a description of all discrepancies found.~~

~~6.~~ 5. All manual picks shall be checked by pharmacists.

~~7.~~ 6. If the robot picks an incorrect medication, the pharmacy shall immediately institute a 100% check of all affected doses or compliance packages and ~~shall immediately report the error to the board. The 100% check procedure shall continue until such time as the pharmacy provides documentation to the board showing that the cause of the error has been determined and addressed and that the robot is no longer making errors, and the board allows the pharmacy to return to a reduction in checking~~ perform a root cause analysis to investigate, identify, and correct the source of discrepancy or error in compliance with the pharmacy's policies and procedures prior to resuming full operations of the robot.

~~8.~~ 7. Quarterly quality assurance reports demonstrating the accuracy of the robot shall be maintained. At a minimum, these reports shall include~~: a. A~~ a summary indicating the date and description of all discrepancies that include ~~but are not limited to~~ discrepancies involving the packaging, repackaging, and dispensing of drugs via the robotic pharmacy system found during that quarter plus a cumulative summary since initiation of the robotic pharmacy system.

~~b. The total number of doses packaged or compliance packages prepared for the robotic pharmacy system and total number of doses or compliance packages picked by the robot during the quarter.~~

~~c. The total number of doses or compliance packages picked by the robot that were checked in conducting the 5.0% checks.~~

~~d. Dates and time associated with any scheduled or unanticipated downtime with an explanation of the problem to include the time span of the downtime and the resolution.~~

~~9. All unanticipated downtime shall be immediately reported to the board.~~

~~10.~~ 8. All records required by this section shall be maintained at the address of the pharmacy for a minimum of two years. Records may be maintained in offsite storage or as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

B. Intravenous admixture robotics may be utilized to compound drugs in compliance with § 54.1-3410.2 of the Code of Virginia and 18VAC110-20-321; however, a pharmacist shall verify the accuracy of all compounded drugs pursuant to 18VAVC110-20-270 B.

18VAC110-20-470. Emergency room.

All drugs in the emergency department shall be under the control and supervision of the PIC and shall be subject to the following additional requirements:

1. All drugs kept in the emergency room shall be in a secure place from which unauthorized personnel and the general public are excluded.

2. Oral orders for medications shall be reduced to writing and shall be signed by the ~~practitioner~~ prescriber.

3. A medical practitioner may dispense drugs to his patients if in a bona fide medical emergency or when pharmaceutical services are not readily available and if permitted to do so by the hospital; the drug container and the labeling shall comply with the requirements of this chapter and the Drug Control Act.

4. A record shall be maintained of all drugs administered in the emergency room.

5. A separate record shall be maintained on all drugs, including drug samples, dispensed in the emergency room.

The records shall be maintained for a period of two years showing:

a. Date and time dispensed;

b. Patient's name;

c. Prescriber's name;

d. Name of drug dispensed, strength, dosage form, quantity dispensed, and dose.

18VAC110-20-490. Automated devices for dispensing and administration of drugs.

A. A hospital may use automated devices for the dispensing and administration of drugs pursuant to § 54.1-3301 of the Code of Virginia and §§ 54.1-3401 and 54.1-3434.02 of the Drug Control Act and in accordance with 18VAC110-20-270, 18VAC110-20-420, or 18VAC110-20-460 as applicable.

B. Policy and procedure manual; access codes.

1. Proper use of the automated dispensing devices and means of compliance with requirements shall be set forth in the pharmacy's policy and procedure manual, which shall include provisions for granting and terminating user access.

2. Personnel allowed access to an automated dispensing device shall have a specific access code that records the identity of the person accessing the device. The device may verify access codes using biometric identification or other coded identification after the initial log-on in order to eliminate sharing or theft of access codes.

C. Distribution of drugs from the pharmacy.

1. Prior to removal of drugs from the pharmacy, a delivery record shall be generated for all drugs to be placed in an automated dispensing device ~~which~~. The delivery record shall include the date; drug name, dosage form, and strength; quantity; hospital unit and a unique identifier for the specific device receiving the drug; initials of the person loading the automated dispensing device; and initials of the pharmacist checking the drugs to be removed from the pharmacy and the delivery record for accuracy.

2. At the time of loading any ~~Schedule~~ Schedules II through V drug, the person loading will verify that the count of that drug in the automated dispensing device is correct. Any discrepancy noted shall be recorded on the delivery record and immediately reported to the pharmacist in charge, who shall be responsible for ensuring reconciliation of the discrepancy or properly reporting of a loss.

D. Distribution of drugs from the device.

1. Automated dispensing devices in hospitals shall be capable of producing a hard-copy record of distribution ~~which~~ that shall show patient name, drug name and strength, dose withdrawn, date and time of withdrawal from the device, and identity of person withdrawing the drug. The record shall be filed in chronological order from date of issue or maintained electronically.

2. If an automated dispensing device is used to obtain drugs for dispensing from an emergency room, a separate dispensing record is not required provided the automated record distinguishes dispensing from administration and records the identity of the physician who is dispensing.

E. Discrepancy reports. A discrepancy report for all Schedules II through V drugs and any drugs of concern, as defined in § 54.1-3456.1 of the Code of Virginia, shall be generated for each discrepancy in the count of a drug on hand in the device. Each such report shall be initiated or resolved by the PIC or his designee within 72 hours of the time the discrepancy was discovered or, if determined to be a theft or an unusual loss of drugs, shall be immediately reported to the board in accordance with § 54.1-3404 E of the Drug Control Act.

F. Reviews and audits.

1. The PIC or his designee shall conduct at least a monthly review for compliance with written policy and procedures that are consistent with § 54.1-3434.02 A of the Drug Control Act for security and use of the automated dispensing devices, to include procedures for timely termination of access codes when applicable, accuracy of distribution from the device, and proper recordkeeping.

2. The PIC or his designee shall conduct at least a monthly audit to review distribution of ~~Schedule~~ Schedules II through V drugs from each automated dispensing device as follows:

a. The audit shall reconcile records of all quantities of ~~Schedule~~ Schedules II through V drugs dispensed from the pharmacy with records of all quantities loaded into each device to detect whether any ~~drugs~~ drug recorded as removed from the pharmacy ~~were~~ was diverted rather than ~~being~~ placed in the proper device.

b. If a pharmacy has an ongoing method for perpetually monitoring drugs in ~~Schedule~~ Schedules II through V to ensure drugs dispensed from the pharmacy have been loaded into the device and not diverted, such as with the use of perpetual inventory management software, then the audit required in this subsection may be limited to the discrepancies or exceptions as identified by the method for perpetually monitoring the drugs.

3. The PIC or his designee shall conduct at least a monthly audit to review the dispensing and administration records of ~~Schedule~~ Schedules II through V drugs from each automated dispensing device as follows:

a. The audit shall include a review of administration records ~~from~~ for each device per month for possible

diversion by fraudulent charting. The review shall include all ~~Schedule~~ Schedules II through V drugs administered for a time period of not less than 24 consecutive hours during the audit period.

b. The hard-copy distribution and administration records printed out and reviewed in the audit shall be initialed and dated by the person conducting the audit. If nonpharmacist personnel conduct the audit, a pharmacist shall review the record and shall initial and date the record.

c. The PIC or his designee shall be exempt from requirements of this audit if reconciliation software that provides a statistical analysis is used to generate reports at least monthly. The statistical analysis shall be based on:

(1) Peer-to-peer comparisons of use for that unit or department; and

(2) Monitoring of overrides and unresolved discrepancies.

d. The report shall be used to identify suspicious activity, which includes~~, but is not limited to,~~ usage beyond three standard deviations in peer-to-peer comparisons. A focused audit of the suspicious activity and individuals associated with the activity shall be performed whenever suspicious activity is identified from the reports.

4. The PIC or his designee shall maintain a record of compliance with the reviews and audits in accordance with subsection H of this section.

G. Inspections. Automated dispensing devices shall be inspected monthly by pharmacy personnel to verify proper storage, proper location of drugs within the device, expiration dates, the security of drugs, and validity of access codes. The PIC or his designee shall maintain documentation of the inspection in accordance with subsection H of this section. With the exception of a monthly physical review of look-alike and sound-alike drugs stored within matrix drawers or open access areas within the device, such monthly inspection shall not require physical inspection of the device if the device is capable of and performs the following:

1. At least daily monitoring of refrigerator or freezer storage with documented temperature ranges, variances, and resolutions;

2. Automatic identification and isolation of the location of each drug within the device using a machine readable product identifier, such as barcode technology, and generation of a report verifying the applicable settings;

3. Electronic tracking of drug expiration dates and generation of proactive reports allowing for the replacement of drugs prior to their expiration date; and

4. Electronic detection of the opening of the device, identification of the person accessing the device, automatic denial of access to the device during malfunctions and mechanical errors, and generation of reports of any malfunction and mechanical error.

H. Records.

1. All records required by this section shall be maintained for a period of not less than two years. Records shall be maintained at the address of the pharmacy providing services to the hospital except manual Schedule VI distribution records, reports auditing for indications of suspicious activity, and focused audits, all of which may be maintained in offsite storage or electronically as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic records are retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

2. Distribution and delivery records and required initials may be generated or maintained electronically provided:

a. The system being used has the capability of recording an electronic signature that is a unique identifier and restricted to the individual required to initial or sign the record.

b. The records are maintained in a read-only format that cannot be altered after the information is recorded.

c. The system used is capable of producing a hard-copy printout of the records upon request.

3. ~~Schedule~~ Schedules II through V distribution and delivery records may also be stored ~~offsite~~ off site or electronically in compliance with requirements of subdivision 1 of this subsection and if authorized by DEA or in federal law or regulation.

4. Hard-copy distribution and administration records that are printed and reviewed in conducting required audits may be maintained at an off-site location or electronically provided they can be readily retrieved upon request; provided they are maintained in a read-only format that does not allow alteration of the records; and provided a separate log is maintained for a period of two years showing dates of audit and review, the identity of the automated dispensing device being audited, the time period covered by the audit and review, and the initials of all reviewers.

18VAC110-20-530. Pharmacy's responsibilities to long-term care facilities.

A. The pharmacy serving a long-term care facility shall:

1. Receive a valid order prior to the dispensing of any drug.

2. Ensure that personnel administering the drugs are trained in using the dispensing system provided by the pharmacy.

3. Ensure that the drugs for each patient are kept and stored in the originally received containers and that the medication of one patient shall not be transferred to another patient.

4. Ensure that each cabinet, cart, or other area utilized for the storage of drugs is locked and accessible only to authorized personnel.

5. Ensure that the storage area for patients' drugs is well lighted, of sufficient size to permit storage without crowding, and is maintained at appropriate temperature.

6. Ensure that poison and drugs for "external use only" are kept in a cabinet and separate from other medications.

7. Provide for the disposition of discontinued drugs under the following conditions:

a. Discontinued drugs may be returned to the pharmacy for resale or transferred to another pharmacy for redispensing to the indigent if authorized by § 54.1-3411.1 of the Code of Virginia and 18VAC110-20-400, or disposed of by appropriate means in compliance with 18VAC110-20-210 and with any applicable local, state, and federal laws and regulations.

b. Drug destruction at the pharmacy shall be witnessed by the PIC and by another pharmacy employee. The pharmacy may transfer the drugs for destruction to an entity appropriately licensed to accept returns for destruction. Drug destruction at the facility shall be witnessed by the director of nursing or, if there is no director, then by the facility administrator and by a pharmacist providing pharmacy services to the facility or by another employee authorized to administer medication.

c. A complete and accurate record of the drugs returned or destroyed or both shall be made. The original of the record of destruction shall be signed and dated by the persons witnessing the destruction and maintained at the long-term care facility for a period of two years. A copy of the destruction record shall be maintained at the provider pharmacy for a period of two years.

d. Long-term care facilities shall destroy discontinued or unused drugs or return them to the pharmacy within 30 days of the date the drug was discontinued.

8. Ensure that appropriate drug reference materials are available in the facility units.

9. Ensure that a monthly review of drug therapy by a pharmacist is conducted for each patient in long-term care facilities except those licensed under Title 63.2 of the Code of Virginia. Such review shall be used to determine any irregularities, which may include ~~but not be limited to~~ drug therapy, drug interactions, drug administration, or transcription errors. The pharmacist shall sign and date the notation of the review. All significant irregularities shall be brought to the attention of the attending practitioner or other party having authority to correct the potential problem.

B. The pharmacy providing services to the long-term care facility may share a copy of a Schedule VI prescription or order with another pharmacy for the purpose of dispensing an immediate supply of drugs, not to exceed a seven-day supply, without transferring the prescription pursuant to 18VAC110-20-360 if the following conditions are satisfied:

1. The pharmacy providing services to the long-term care facility has a written contract with the other pharmacy outlining services to be provided, the recordkeeping associated with the dispensing, and the responsibilities of each pharmacy; and

2. The pharmacy providing services to the long-term care facility provides a valid oral or written prescription or order to the other pharmacy.

18VAC110-20-550. Stat-drug box.

A. An additional drug box called a stat-drug box may be prepared by a pharmacy to provide for initiating therapy prior to the receipt of ordered drugs from the pharmacy. Access to the stat-drug box is restricted to a licensed nurse, pharmacist, or prescriber and only these licensed individuals may administer a drug taken from the stat-drug box. Additionally, a valid prescription or lawful order of a prescriber must exist prior to the removal of any drug from the stat-drug box. A stat-drug box shall be subject to the following conditions:

1. The box is sealed in such a manner that will preclude the loss of drugs.

a. The dispensing pharmacy must have a method of sealing such boxes so that once the seal is broken, it cannot be reasonably resealed without the breach being detected.

b. If a seal is used, it shall have a unique numeric or alphanumeric identifier to preclude replication or resealing, or both. The pharmacy shall maintain a record of the seal identifiers when placed on a box and maintain the record until such time as the seal is replaced.

c. In lieu of seals, a box with a built-in mechanism preventing resealing or relocking once opened except by the provider pharmacy is also acceptable.

2. The box shall have a form to be filled out upon opening the box and removing contents to write the name of the person opening the box, the date, the time, and the name and quantity of items removed. When the stat-drug box has been opened, it is returned to the pharmacy.

3. There shall be a listing of the contents of the box maintained in the pharmacy and also attached to the box in the facility. This same listing shall become a part of the policy and procedure manual of the facility served by the pharmacy.

4. The drug listing on the box shall bear an expiration date for the box. The expiration date shall be the day on which the first drug in the box will expire.

5. The contents of the box shall be limited to those drugs in which a delay in initiating therapy may result in harm to the patient.

a. The listing of drugs contained in the stat-drug box shall be determined by the provider pharmacist in consultation with the medical and nursing staff of the long-term care facility.

b. The stat-drug box shall contain no more than 20 solid dosage units per schedule of Schedules II through V drugs except that one unit of liquid, not to exceed 30 ml, may be substituted for a solid dosage unit in each drug schedule. If the unit of a liquid that may contain more than one dose is removed from the stat-drug box pursuant to a patient order, the remainder shall be stored with that patient's other drugs, may be used for subsequent doses administered to that patient, and shall not be administered to any other patient.

B. Drugs that would be stocked in a stat-drug box, pursuant to this section, may be stocked in an automated drug dispensing system in a nursing home in accordance with 18VAC110-20-555, except that the quantity of drugs in Schedules II through V stocked in the system shall be determined by the provider pharmacist in consultation with the medical and nursing staff of the nursing home.

C. The pharmacy may provide more than one stat-drug box to a long-term care facility. Contents of the multiple boxes are not required to be uniform.

18VAC110-20-580. ~~Humane societies and animal~~ Animal shelters.

~~A humane society or~~ An animal shelter, after having obtained the proper registrations pursuant to state and federal laws, may purchase, possess and administer controlled substances in accordance with provisions of § 54.1-3423 of the Code of Virginia provided that these procedures are followed:

1. Drugs ordered by a ~~humane society~~ public or private animal shelter, as defined in § 3.2-6500 of the Code of Virginia, shall only be stored and administered at the address of the ~~humane society or~~ shelter.

2. A veterinarian shall provide general supervision for the facility and shall provide and certify training in accordance with guidelines set forth by the State Veterinarian to the ~~person(s)~~ persons responsible for administration of the drugs. Certification of training signed by the veterinarian providing the training shall be maintained at the facility for each person administering drugs and must be retained for not less than two years after the person ceases administering.

3. The person in charge of administration of drugs for the facility shall obtain the required permit and controlled substances registration from the board and shall be responsible for maintaining proper security and required records of all controlled substances obtained and administered.

a. If that person ceases employment with the facility or relinquishes his position, he shall immediately return the registration to the board and shall take a complete and accurate inventory of all drugs in stock.

b. An application for a new registration shall be filed with the required fee within 14 days on a form provided by the board. At that time, the new responsible person shall take a complete and accurate inventory of all drugs in stock.

4. Drugs shall be stored in a secure, locked place and only the ~~person(s)~~ person responsible for administering may have access to the drugs.

5. All invoices and order forms shall be maintained for a period of two years.

6. Complete and accurate records shall be maintained for two years on the administration of the drug. The record shall show the name and strength of the drug, date of administration, the species of the animal, the weight of animal, the amount of drug administered and the signature of the person administering the drug.

Part ~~XV~~ XIII
Medical Equipment Suppliers

18VAC110-20-630. Issuance of a permit as a medical equipment supplier.

A. Any person or entity desiring to obtain a permit as a medical equipment supplier shall file an application with the board on a form approved by the board. An application shall be filed for a new permit or for acquisition of an existing medical equipment supplier. The application shall designate the hours of operation the location will be open to service the public and shall be signed by a person who works at the location address on the application and will act as a responsible party for that location.

B. Any change in the hours of operation expected to last for more than one week shall be reported to the board in writing and a notice posted, at least 14 days prior to the anticipated change, in a conspicuous place to the public.

1. Such notification of a change in hours of operation is not required when the change is necessitated by emergency circumstances beyond the control of the owner or responsible party or when the change will result in an expansion of the current hours of operation.

2. If the medical equipment supplier is unable to post the change in hours 14 days in advance, the responsible party or owner shall ensure the board is notified as soon as he knows of the change and disclose the emergency circumstances preventing the required notification.

C. Within 14 days of a change in the responsible party assigned to the permit, the outgoing responsible party shall inform the board, and a new application shall be submitted indicating the name of the new responsible party.

~~B.~~ D. A permit holder proposing to change the location of an existing license or permit or make structural changes to an existing location shall file an application for approval of the changes following an inspection conducted by an authorized agent of the board.

~~C.~~ E. A permit shall not be issued to any medical equipment supplier to operate from a private dwelling or residence or to operate without meeting the applicable facility requirements for proper storage and distribution of drugs or devices. Before any license or permit is issued, the applicant shall demonstrate compliance with all federal, state and local laws and ordinances.

18VAC110-20-680. Medical equipment suppliers.

A. A medical equipment supplier's location shall be inspected by the board prior to engaging in business. The location shall be clean and sanitary and shall have a system of temperature control to provide for specified storage conditions for any Schedule VI drug or device.

B. Hypodermic needles and syringes and Schedule VI drugs shall not be placed on open display or in an open area where patrons will have access to such items. No Schedule VI devices shall be placed in an area where responsible parties cannot exercise reasonable supervision and control.

C. A medical equipment supplier shall receive a valid order from a practitioner prior to dispensing and shall maintain this order on file on the premises for a period of two years from date of last dispensing. The original order may be kept at a centralized office as long as it is readily retrievable within 48 hours and a copy of the order is kept on the premises of the dispensing supplier. In lieu of a hard copy, an electronic image of an order may be maintained in an electronic database provided it preserves and provides an exact image of the order that is clearly legible and made available within 48 hours of a request by a person authorized by law to have access to prescription information.

D. Medical equipment suppliers shall make a record at the time of dispensing. This record shall be maintained on the premises for two years from date of dispensing and shall include:

1. Name and address of patient;

2. Item dispensed and quantity, if applicable; and

3. Date of dispensing.

E. A valid order authorizing the dispensing of drugs or devices may be transferred from one medical equipment supplier to another medical equipment supplier provided the order can be filled or refilled. The transfer shall be communicated either orally by direct communication between an individual at the transferring medical equipment supplier and the receiving medical equipment supplier, by facsimile machine, or by electronic transmission.

1. The transferring medical equipment supplier shall:

a. Record the word "VOID" on the face of the invalidated order;

b. Record on the reverse side of the invalidated order the name and address of the medical equipment supplier to which it was transferred, the date of the transfer, and for an oral transfer, the name of the individual receiving the prescription information and the name of the individual transferring the information.

2. The receiving medical equipment supplier shall:

a. Write the word "TRANSFER" on the face of the transferred prescription;

b. Provide all information required to be on a valid order to include:

(1) Date of issuance of original order;

(2) Original number of refills authorized on the original order;

(3) Date of original dispensing if applicable;

(4) Number of valid refills remaining and date of last dispensing;

(5) Medical equipment supplier name and address from which the order information was transferred; and

(6) Name of transferring individual if transferred orally.

3. Both the original and transferred order shall be maintained for a period of two years from the date of last refill. In lieu of recording the required information on the hard copy of a valid order, a medical equipment supplier may record all required information in an automated data processing system used for the storage and retrieval of dispensing information.

~~E.~~ F. A nonresident medical equipment supplier shall register and practice in accordance with § 54.1-3435.3:1 of the Code of Virginia.

CHAPTER 21
REGULATIONS GOVERNING THE LICENSURE OF PHARMACISTS AND REGISTRATION OF PHARMACY TECHNICIANS

Part I General Provisions

18VAC110-21-10. Definitions.

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

"ACPE" means the Accreditation Council for Pharmacy Education.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the board.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"FPGEC certificate" means the certificate given by the Foreign Pharmacy Equivalency Committee of NABP that certifies that the holder of such certificate has passed the Foreign Pharmacy Equivalency Examination and a credential review of foreign training to establish educational equivalency to board approved schools of pharmacy and has passed approved examinations establishing proficiency in English.

"Inactive license" means a license that is registered with the Commonwealth but does not entitle the licensee to practice, and the holder of which is not required to submit documentation of CE necessary to hold an active license.

"NABP" means the National Association of Boards of Pharmacy.

"Pharmacy technician trainee" means a person who is currently enrolled in an approved pharmacy technician training program and is performing duties restricted to pharmacy technicians for the purpose of obtaining practical experience in accordance with § 54.1-3321 D of the Code of Virginia.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for the voluntary examination and certification of pharmacy technicians.

18VAC110-21-20. Fees.

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

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	$180
2. Pharmacy intern registration	$15
3. Pharmacy technician registration	$25
4. Approval of a pharmacy technician training program	$150
5. Approval of a continuing education program	$100

D. Annual renewal fees.

1. Pharmacist active license – due no later than December 31	$90
2. Pharmacist inactive license – due no later than December 31	$45
3. Pharmacy technician registration – due no later than December 31	$25
4. Pharmacy technician training program	$75 every two years

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license or registration within one year of the expiration date or within two years in the case of a pharmacy technician training program. In addition, engaging in activities requiring a license or registration after the expiration date of such license or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	$30
2. Pharmacist inactive license	$15
3. Pharmacy technician registration	$10
4. Pharmacy technician training program	$15

F. Reinstatement fees. Any person or entity attempting to renew a license or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board

and, except for reinstatement following revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license	$210
2. Pharmacist license after revocation or suspension	$500
3. Pharmacy technician registration	$35
4. Pharmacy technician registration after revocation or suspension	$125
5. A pharmacy technician training program that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus a reinstatement fee of $75. A pharmacy technician training program that ceases operation and wishes to resume shall not be eligible for reinstatement but shall apply for a new registration.	

G. Miscellaneous fees.

1. Duplicate wall certificate	$25
2. Returned check	$35
3. Duplicate license or registration	$10
4. Verification of licensure or registration	$25

18VAC110-21-30. Current name and address.

A. It shall be the duty and responsibility of each licensee and registrant to inform the board of his current name and address. A licensee or registrant shall notify the board within 14 days in writing or electronically of a name change or a change of an address of record. Properly updating a name or an address of record directly through the board's web-based application or other approved means shall constitute lawful notification.

B. All notices required by law or by this chapter are deemed to be received by the licensee or registrant when sent to the address of record and shall not relieve the licensee or registrant of the obligation to comply.

C. An individual licensed by or registered with the board who has provided the board with a public address that is different from the address of record shall notify the board in writing if there is a change in the address.

18VAC110-21-40. Unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-3316 of the Code of Virginia:

1. Failing to comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records or related to providing patient records to another practitioner or to the patient or the patient's personal representative;

2. Willfully or negligently breaching the confidentiality of a patient unless otherwise required or permitted by applicable law;

3. Failing to maintain the confidentiality of information received from the Prescription Monitoring Program, obtaining such information for reasons other than to assist in determining the validity of a prescription to be filled, or misusing information received from the program;

4. Engaging in disruptive or abusive behavior in a pharmacy or other health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;

5. Engaging or attempting to engage in a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or the patient's family, including sexual misconduct with a patient or a member of the patient's family or other conduct that results or could result in personal gain at the expense of the patient;

6. Failing to maintain adequate safeguards against the diversion of controlled substances;

7. Failing to appropriately respond to a known dispensing error in a manner that protects the health and safety of the patient;

8. Delegating a task within the practice of pharmacy to a person who is not adequately trained to perform such a task;

9. Failing by the pharmacist in charge to ensure that pharmacy interns and pharmacy technicians working in the pharmacy are registered and that such registration is current;

10. Failing to exercise professional judgment in determining whether a prescription meets the requirements of law before dispensing;

11. Obtaining money or property of a patient or client by fraud or misrepresentation;

12. Providing false information or failing to cooperate with an employee of the Department of Health Professions in the conduct on an investigation or inspection;

13. Violating any provision of this chapter, 18VAC110-20, or Chapter 33 (§ 54.1-3300 et seq.) or 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia;

14. Performing any act likely to deceive, defraud, or harm the public; or

15. Having a restriction of a license to practice pharmacy or a registration as a pharmacy technician in another jurisdiction in the United States.

18VAC110-21-45. Kickbacks, fee-splitting, interference with supplier.

A. A pharmacist shall not solicit or foster prescription practice with a prescriber of drugs or any other person providing for rebates, kickbacks, fee-splitting, or special charges in exchange for prescription orders.

B. A pharmacist shall not interfere with the patient's right to choose his supplier of medication or cooperate with any person or persons in denying a patient the opportunity to select his supplier of prescribed medications.

Part II
Licensure Requirement for Pharmacists

18VAC110-21-50. Requirements for pharmacy practical experience.

A. Each applicant for licensure as a pharmacist shall have gained practical experience in the practice of pharmacy as set forth in this section and 18VAC110-21-60.

B. An applicant for licensure as a pharmacist shall attain a minimum of 1,500 hours of practical experience.

C. Practical experience that is gained within an ACPE-accredited school of pharmacy, that conforms to the current ACPE standards, and that allows the student to gain at least 1,500 hours of practical experience shall meet the board's practical experience requirements for licensure as a pharmacist.

D. All practical experience credit gained outside of an ACPE-accredited school of pharmacy program shall only be gained after successful completion of the equivalent of at least two semesters in an ACPE-accredited school of pharmacy. Credit shall not be given for more than 50 hours in one week and not less than an average of 20 hours per week averaged over a month. The board may grant an exception to the minimum number of hours for good cause shown.

E. In accordance with § 54.1-3312 of the Code of Virginia, all practical experience required by this section shall be gained within the United States.

18VAC110-21-60. Procedure for gaining practical experience.

A. Each person desiring to gain practical pharmacy experience in Virginia shall first register with the board as a pharmacy intern on a form provided by the board prior to becoming so engaged as a pharmacy intern. This requirement shall apply to any person gaining practical experience within the Commonwealth whether for licensure in Virginia or in another state.

B. In order to be eligible to register as a pharmacy intern, an applicant shall meet at least one of the following criteria:

1. The applicant shall be enrolled in and have started course work in a professional degree program of a board-approved school of pharmacy. Such registration is only valid while the student is enrolled in the school of pharmacy and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist. An expiration date shall be assigned to the registration to cover the estimated time period for the student to complete the school program and pass the required examinations. If the student is no longer enrolled in the school program, takes a voluntary break from the program, or is otherwise not actively participating in the school program, except for regularly scheduled school breaks, the registration is no longer valid and shall be returned to the board immediately;

2. The applicant is a graduate of a board-approved school of pharmacy or a graduate of a foreign school of pharmacy, has established educational equivalency and proficiency in English by obtaining the FPGEC certificate, and desires to gain required practical experience required for licensure as a pharmacist. Such applicant shall provide documentation on a board-approved form of current employment or an employment start date within 90 days in a pharmacy in Virginia with approval by the supervising pharmacist. An expiration date shall be assigned to cover the estimated time period needed to obtain the required practical experience hours and take the required examinations to become licensed as a pharmacist;

3. The applicant has already gained the required practical experience but is an otherwise qualified applicant awaiting examination for licensure. A three-month expiration date shall be assigned to allow the applicant time to take required examinations; or

4. The applicant is an applicant for reactivation or reinstatement of a previously issued pharmacist license and is meeting board requirements for relicensure. An expiration date shall be assigned to reasonably cover the period of time necessary to meet the board requirements.

C. For documented good cause shown, the executive director of the board may extend the expiration date of the intern registration upon submission of an application form approved by the board and payment of the initial application fee.

D. A pharmacy intern shall be supervised by a pharmacist who holds a current, unrestricted license and assumes full

responsibility for the training, supervision, and conduct of the intern.

E. The intern registration of a pharmacy student shall be valid only while the student is enrolled in a school of pharmacy. The registration card issued by the board shall be returned to the board upon failure to be enrolled.

F. Practical experience gained within any other state must be registered with and certified by the board of that state in order to be accepted or certified by the board. In the event that a state relies on the pharmacy school to certify the hours of experience, an affidavit from the pharmacy school certifying the hours of experience gained in the United States may be accepted in lieu of board certification.

G. All practical experience of the pharmacy intern shall be evidenced by an affidavit approved by the board, which shall be filed prior to or with the application for examination for licensure.

H. An applicant for licensure by endorsement may provide verification acceptable to the board of practical experience hours worked as a pharmacist in another state within the United States in lieu of prelicensure intern hours in order to meet the practical experience requirement.

I. A pharmacy intern shall notify the board in writing of any change in address of record within 14 days of such change.

18VAC110-21-70. Curriculum and approved schools of pharmacy.

A. The following minimum educational requirements for the specified periods shall be recognized by the board for the purpose of licensure.

1. On and after June 1, 1936, but before June 1, 1964, the applicant for licensure shall have been graduated from a four-year course of study with a Bachelor of Science degree in pharmacy awarded.

2. On and after June 1, 1964, the applicant for licensure shall have been graduated from at least a five-year course of study with a Bachelor of Science degree in pharmacy or a Doctorate of Pharmacy degree awarded.

B. In order to be licensed as a pharmacist within this Commonwealth, the applicant shall have been granted the first professional degree from a program of a school of pharmacy that meets the requirements of § 54.1-3312 of the Code of Virginia or shall satisfy the requirements of 18VAC110-21-90.

18VAC110-21-80. Content of the examination and grades required; limitation on admittance to examination.

A. Prior to admission to any examination required for licensure, the applicant shall have met all other requirements to include education and practical experience requirements, but in no case shall the applicant be admitted if grounds exist to deny licensure under § 54.1-3316 of the Code of Virginia.

B. The applicant shall achieve a passing score as determined by the board on the licensure examination that is approved by the board and that shall consist of an integrated examination of pharmacy practice, pharmacology, pharmacy mathematics, and such other subjects as are necessary to assure that the candidate possesses the necessary knowledge and skills to practice pharmacy.

C. When an applicant for licensure by examination fails to meet the passing requirements of the board-approved integrated pharmacy examination on three occasions, the applicant shall not be readmitted to the examination until he has completed an additional 1,000 hours of practical experience as a pharmacy intern as set forth in 18VAC110-21-60.

D. The applicant shall also achieve a passing score as determined by the board on an examination that tests the candidate's knowledge of federal and state laws related to pharmacy practice. If an applicant has not subsequently been issued a license by any jurisdiction in the United States within three years of achieving a passing score, the applicant shall retake the examination in order to be licensed in Virginia.

E. When an applicant fails to pass the law examination, the applicant shall not be allowed to retake it for a period of 30 days.

F. If an applicant requests a testing accommodation for either examination based on a physical or mental impairment that substantially limits one or more major life activities, subject to the Americans with Disabilities Act, the board may approve a reasonable accommodation that does not compromise the security or integrity of the examination.

1. Supporting documentation shall be provided by the applicant to include the following to be considered for review:

a. A letter of request from the candidate that specifies the testing accommodation requested;

b. A written report of an evaluation (educational, psychological, or physical) within the preceding two years from a qualified professional that states a diagnosis of the disability, describes the disability, recommends specific accommodations, and provides justification that the accommodation is appropriate and necessary for the diagnosed disability. If the comprehensive evaluation was done more than two years ago and the condition is one that is not subject to change, the original evaluation report may be submitted along with a current letter from the qualified professional stating that there has been no change in the condition since the time of the evaluation; and

c. A written statement from the appropriate person at the applicant's school of pharmacy that describes any testing accommodations made while the student was enrolled, if applicable.

2. The applicant will be notified in writing of the decision. If the request for accommodation is granted, the approval information will be forwarded to the examination contractor and the form of the accommodation will be coordinated with the contractor.

18VAC110-21-90. Requirements for foreign-trained applicants.

A. Applicants for licensure who were trained in foreign schools of pharmacy shall obtain the FPGEC certificate prior to being allowed to register as a pharmacy intern and gain the required practical experience in Virginia.

B. After obtaining the FPGEC certificate, the applicant may apply for a pharmacy intern registration and shall fulfill the requirements for practical experience set forth in 18VAC110-21-50 and 18VAC110-21-60 before being admitted to examinations required by 18VAC110-21-80.

C. Applicants for licensure who were trained in foreign schools of pharmacy shall also complete and achieve passing scores on the examinations set forth in 18VAC110-21-80 before being licensed as a pharmacist.

D. Applicants for licensure who were trained in foreign schools of pharmacy, but who subsequently have been granted a professional degree from a program of a school of pharmacy that meets the requirements of § 54.1-3312 of the Code of Virginia, as specified in18VAC110-21-70, shall be exempt from the requirement for a FPGEC certificate but shall fulfill the requirements for practical experience set forth in 18VAC110-21-50 and 18VAC110-21-60 before being admitted to examinations required by 18VAC110-21-80.

18VAC110-21-100. Registration for voluntary practice by out-of-state licensees.

Any pharmacist who seeks registration to practice on a voluntary basis pursuant to subdivision 12 of § 54.1-3301 of the Code of Virginia under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice;

2. Provide a complete list of each state in which the pharmacist has held a pharmacist license and a copy of any current license;

3. Provide the name of the nonprofit organization and the dates and location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with the provisions of subdivision 12 of § 54.1-3301 of the Code of Virginia.

Part III
Requirements for Renewal or Reinstatement of Licensure

18VAC110-21-110. Renewal and reinstatement of license.

A. Pharmacist licenses expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee, renewal form, and statement of compliance with continuing education requirements.

B. A pharmacist newly licensed on or after October 1 shall not be required to renew that license until December 31 of the following year.

C. A pharmacist who fails to renew his license by the expiration date may renew his license at any time within one year of its expiration by submission of the renewal fee and late fee, renewal form, and statement of compliance with continuing education requirements.

D. A pharmacist who fails to renew his license for more than one year following expiration and who wishes to reinstate such license shall submit an application for reinstatement, pay the current renewal fee and a reinstatement fee, and submit documentation showing compliance with continuing education requirements. Reinstatement is at the discretion of the board and may be granted by the executive director of the board provided no grounds exist to deny said reinstatement.

E. A pharmacist who has been registered as inactive for more than one year must apply for reactivation, submit documentation showing compliance with continuing education requirements, and pay the difference between the inactive fee and the current year active renewal fee in order to resume active licensure.

F. In order to reactivate or reinstate a license to active status, a pharmacist who holds an inactive license, who has allowed his license to lapse, or who has had his license suspended or revoked must submit evidence of completion of CEUs or hours equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 60 hours of CE.

G. A pharmacist whose license has been lapsed, is in inactive status, or has been suspended or revoked for more than five years shall, as a condition of reinstatement or reactivation in addition to 60 hours CE, take and receive a passing score on the board-approved law examination and furnish acceptable documentation of one of the following:

1. Active pharmacy practice within the past five years as a properly licensed pharmacist in another state; or

2. Practical experience as a pharmacy intern registered with the board of at least 160 hours within six months immediately prior to being reinstated or reactivated.

H. The practice of pharmacy without a current, active pharmacist license is unlawful and shall constitute grounds for disciplinary action by the board.

18VAC110-21-120. Requirements for continuing education.

A. A pharmacist shall be required to have completed a minimum of 1.5 CEUs or 15 contact hours of continuing pharmacy education in an approved program for each annual renewal of licensure. CEUs or hours in excess of the number required for renewal may not be transferred or credited to another year.

B. A pharmacy education program approved for continuing pharmacy education is:

1. One that is approved by the ACPE;

2. One that is approved as a Category I continuing medical education course, the primary focus of which is pharmacy, pharmacology, or drug therapy; or

3. One that is approved by the board in accordance with the provisions of 18VAC110-21-130.

C. Of the 15 contact hours required for annual renewal, at least five hours shall be obtained in courses or programs that are live or real-time interactive. Included in the five hours, the following may be credited:

1. A maximum of one hour for attendance at a board meeting or formal hearing; or

2. A maximum of one hour for serving as a preceptor for a pharmacy student or resident in an accredited school or program or for a foreign-trained student obtaining hours of practical experience.

D. The board may grant an extension pursuant to § 54.1-3314.1 E of the Code of Virginia. Any subsequent extension shall be granted only for good cause shown.

E. Pharmacists are required to attest to compliance with the CE requirements in a manner approved by the board at the time of their annual license renewal. Following each renewal period, the board may conduct an audit of the immediate past two years CE documents to verify compliance with the requirements. Pharmacists are required to maintain for two years following renewal the original certificates documenting successful completion of CE, showing the date and title of the CE program or activity, the number of CEUs or contact hours awarded, and a certifying signature or other certification of the approved provider. Pharmacists selected for audit must provide these original documents to the board by the deadline date specified by the board in the audit notice.

18VAC110-21-130. Approval of continuing education programs.

A. The board will approve without application or further review any program offered by an ACPE-approved provider and will accept for credit certificates bearing the official ACPE logo and program number.

B. The board may approve an individual CE program under the following provisions:

1. An approved individual program is a course, activity, or lecture that includes subject matter related to the competency of the practice of pharmacy and that has been approved for CE credit by the board.

2. In order to receive approval for an individual program, the sponsor or provider must apply prior to offering the program on a form provided by the board. The information that must be provided shall include:

a. Name of provider;

b. Location;

c. Date and time of program;

d. Charges to participants;

e. Description of program content and objectives;

f. Credentials of speaker or author;

g. Method of delivery;

h. Evaluation procedure;

i. Evidence of a post assessment;

j. Credits requested;

k. Mechanism for recordkeeping; and

l. Any such information as the board deems necessary to assure quality and compliance.

3. The sponsor applying for board approval of an individual program shall pay a fee as required in 18VAC110-21-20 C 5.

4. The board shall notify the provider or sponsor within 60 days following the receipt of a completed application of approval or disapproval of a program and the number of credits that may be awarded. The board shall also assign an expiration date for approval of the program not to exceed two years from the date of approval.

5. The provider of an approved program shall provide to each participant who completes the required hours and passes the post-test a certification with the name of the provider, name of the participant, description of course and method of delivery, number of hours credited, date of completion, and program identification number.

6. The provider of an approved program shall maintain all records on that program, program participants, and hours awarded for a period of five years and shall make those records available to the board upon request.

7. The board shall periodically review and monitor programs. The provider of a CE program shall waive registration fees for a representative of the board for that purpose.

8. Any changes in the information previously provided about an approved program or provider shall be submitted, or the board may withdraw its approval. If a provider wants to give a live program more than once, all program dates shall either be submitted on the original application or provided to the board in subsequent correspondence at least five days prior to giving the program.

Part IV
Requirements for Pharmacy Technician Registration

18VAC110-21-140. Application for registration as a pharmacy technician.

A. Any person wishing to apply for registration as a pharmacy technician shall submit the application fee and an application on a form approved by the board.

B. To be registered as a pharmacy technician, an applicant shall provide evidence of the following:

1. Satisfactory completion of a board-approved training program; and

2. A passing score on a board-approved examination.

C. In lieu of the requirements of subsection B of this section, an applicant may provide evidence of current PTCB certification.

D. A pharmacy technician trainee enrolled in an approved pharmacy technician training program pursuant to § 54.1-3321 D of the Code of Virginia may perform tasks restricted to pharmacy technicians for no more than nine consecutive months from the date the trainee begins performing duties restricted to a pharmacy technician without becoming registered as a pharmacy technician.

18VAC110-21-150. Criteria for approval for training programs.

A. Any person wishing to apply for approval of a pharmacy technician training program shall submit the application fee, a sample certificate, and an application on a form approved by the board and meet the criteria established in this section.

B. The curriculum of a training program for pharmacy technicians shall include instruction in applicable current laws and regulations and in the tasks that may be performed by a pharmacy technician to include the following or any other task restricted to pharmacy technicians in regulation:

1. The entry of prescription information and drug history into a data system or other recordkeeping system;

2. The preparation of prescription labels or patient information;

3. The removal of the drug to be dispensed from inventory;

4. The counting, measuring, or compounding of the drug to be dispensed;

5. The packaging and labeling of the drug to be dispensed and the repackaging thereof;

6. The stocking or loading of automated dispensing devices or other devices used in the dispensing process; and

7. The acceptance of refill authorization from a prescriber or the prescriber's authorized agent provided there is no change to the original prescription.

C. Each program shall have a program director who shall be either (i) a pharmacist with a current license in any jurisdiction and who is not currently suspended or revoked in any jurisdiction in the United States; (ii) a pharmacy technician with at least one year of experience performing technician tasks who holds a current registration in Virginia or current PTCB certification and who is not currently suspended or revoked as a pharmacy technician in any jurisdiction; or (iii) other person approved and deemed qualified by the board to be a program director.

D. Instructors for the core components listed in subsection B of this section shall meet the requirements for the program director listed in subsection C of this section. The program director may serve as an instructor.

E. The length of the program shall be sufficient to prepare a program participant to sit for the board-approved examination and demonstrate entry-level competency.

F. The program shall maintain records of program participants either on site or at another location where the records are readily retrievable upon request for inspection. A program shall provide a certificate of completion, including the program approval number, to participants who successfully complete the program and provide verification of completion of the program for a participant upon request by the board. Records shall be maintained for two years from date of completion or termination of program.

G. The program shall report within 14 days any substantive change in the program to include a change in program name, program certificate, program director, instructors, name of institution or business if applicable, address, program content, length of program, or location of records.

H. A pharmacy technician training program approval expires after two years, after which the program may apply for renewal. For continued approval, the program shall submit the renewal application, renewal fee, and a self-evaluation

report on a form provided by the board at the time of renewal notification. Renewal of a program's approval is at the discretion of the board, and the decision to renew shall be based on documentation of continued compliance with the criteria set forth in this section.

18VAC110-21-160. Examination.

A. The board shall approve one or more examinations to test entry-level competency for pharmacy technicians. In order to be approved, a competency examination shall be developed in accordance with and meet the recognized acceptable test measurement standards of the Joint Technical Standards for Education and Psychological Testing (American Psychological Association, current edition), and shall be administered by an independent third party.

B. The board may contract with an examination service for the development and administration of a competency examination.

C. The board shall determine the minimum passing standard on the competency examination.

D. Any requests for testing accommodations under the Americans with Disabilities Act shall be in accordance with the provisions of 18VAC110-21-80 F.

18VAC110-21-170. Renewal and reinstatement of registration.

A. Pharmacy technician registrations expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee and renewal form. A pharmacy technician newly registered on or after July 1 shall not be required to renew that registration until December 31 of the following year. Failure to receive the application for renewal shall not relieve the pharmacy technician of the responsibility for renewing the registration by the expiration date.

B. A pharmacy technician who fails to renew his registration by the expiration date may renew his registration at any time within one year of its expiration by submission of the renewal fee and late fee, renewal form, and attestation of having met the continuing education requirements.

C. A pharmacy technician who fails to renew his registration for more than one year following expiration and who wishes to reinstate such registration shall submit an application for reinstatement, pay the current renewal fee and a reinstatement fee, and submit documentation showing compliance with continuing education requirements. Reinstatement is at the discretion of the board and may be granted by the executive director of the board provided no grounds exist to deny said reinstatement. Practicing as a pharmacy technician with a lapsed registration shall be illegal and may subject the registrant to disciplinary action by the board.

D. A person who fails to reinstate a pharmacy technician registration within five years of expiration shall not be eligible for reinstatement and shall repeat an approved training program and repeat and pass the examination or hold current PTCB certification before applying to be reregistered.

18VAC110-21-180. Requirements for continued competency.

A. A pharmacy technician shall be required to have completed a minimum of 0.5 CEUs or five contact hours of approved continuing education for each annual renewal of registration. Hours in excess of the number required for renewal may not be transferred or credited to another year.

B. An approved continuing education program shall meet the requirements as set forth in 18VAC110-21-120 B or 18VAC110-21-130 B.

C. Upon written request of a pharmacy technician, the board may grant an extension of up to one year in order for the pharmacy technician to fulfill the continuing education requirements for the period of time in question. The granting of an extension shall not relieve the pharmacy technician from complying with current year requirements. Any subsequent extension shall be granted for good cause shown.

D. Original documentation showing successful completion of continuing education programs shall be maintained by the pharmacy technician for a period of two years following the renewal of his registration. The pharmacy technician shall provide such documentation to the board upon request in a manner to be determined by the board.

CHAPTER 50
REGULATIONS GOVERNING WHOLESALE DISTRIBUTORS, MANUFACTURERS, THIRD-PARTY LOGISTICS PROVIDERS, AND WAREHOUSERS

18VAC110-50-40. Safeguards against diversion of drugs.

A. The holder of the license as a wholesale distributor or permit as a manufacturer, warehouser, or third-party logistics provider, or registration as a nonresident wholesale distributor or nonresident manufacturer shall restrict all areas in which prescription drugs are stored or kept for sale to only those persons specifically designated as necessary for the manufacture, receipt, storage, distribution, or quality control of the controlled substance inventory and shall provide reasonable security measures to include appropriate locking devices on all access doors to these areas and adequate lighting both inside and outside the facility to deter unauthorized entry and diversion.

B. The holder of the license, permit, or registration, except for those distributors of only medical gases other than nitrous oxide, shall install a device for the detection of breaking subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.

2. ~~The~~ One communication line installation shall be hardwired and both the installation and device shall be based on accepted burglar alarm industry standards to include wireless motion sensors.

3. The device shall be maintained in operating order ~~and~~, shall have an auxiliary source of power, and shall be capable of sending an alarm signal to the monitoring entity when breached if the communication line is not operational.

4. The device shall fully protect all areas where prescription drugs are stored and shall be capable of detecting breaking by any means when activated.

5. Access to the alarm system shall be restricted to the person named on the application as the responsible party or to persons specifically designated in writing in a policy and procedure manual.

6. The system shall be activated whenever the drug storage areas are closed for business.

C. Distribution or delivery of prescription drugs shall be accomplished in a manner to prevent diversion or possession of drugs by unauthorized persons.

1. The holder of the license, permit, or registration shall only deliver prescription drugs to a person authorized to possess such drugs at a location where the person is authorized to possess such drugs~~,~~ and only at a time when someone authorized to possess such drugs is in attendance.

2. The holder of the license, permit, or registration shall affirmatively verify that the person to whom prescription drugs are delivered is authorized by law to receive such drugs.

3. Prescription drugs may be transferred to an authorized agent of a person who may lawfully possess prescription drugs, provided the transfer occurs on the premises of the wholesale distributor, manufacturer, warehouser, third-party logistics provider, nonresident wholesale distributor, or nonresident manufacturer and provided the identity and authorization of the agent is verified, and such transfer is only used to meet the immediate needs of a patient ~~or patients~~.

Part II
Wholesale Distributors and Third-Party Logistics Providers

18VAC110-50-60. Special or limited-use licenses.

The board may issue a limited-use wholesale distributor license~~,~~; limited-use nonresident wholesale distributor registration~~,~~; or limited-use manufacturer, limited-use nonresident manufacturer, or limited-use third-party logistics provider permit to entities that do not engage in the wholesale distribution of prescription drugs or in the acts of a third-party logistics provider except medical gases and may waive certain requirements of regulation based on the limited nature of such distribution. The issuance of such a license shall be subject to continuing compliance with the conditions set forth by the board.

18VAC110-50-80. Minimum qualifications, eligibility, and responsible party.

A. The board shall use the following factors in determining the eligibility for licensure of wholesale distributors, registration of nonresident wholesale distributors, and permitting of third-party logistics providers:

1. The existence of grounds to deny an application as set forth in § 54.1-3435.1 of the Code of Virginia;

2. The applicant's past experience in the manufacture or distribution of drugs or devices;

3. Compliance with the recordkeeping requirements;

4. Prior disciplinary action by a regulatory authority, prior criminal convictions, or ongoing investigations related to the manufacturing, distribution, prescribing, or dispensing of drugs by the responsible party or immediate family members of the responsible party, and owners, directors, or officers; and

5. The responsible party's credentials as set forth in subsection B of this section.

B. Requirements for the person named as the responsible party.

1. The responsible party shall be the primary contact person for the board as designated by the wholesale distributor, nonresident wholesale distributor, or third-party logistics provider, who shall be responsible for managing the wholesale distribution operations at that location;

2. The responsible party shall have a minimum of two years of verifiable experience in a pharmacy or wholesale distributor or third-party logistics provider licensed, registered, or permitted in Virginia or another state where the person's responsibilities included~~, but were not limited to,~~ managing or supervising the recordkeeping, storage, and shipment for drugs or devices;

3. A person may only serve as the responsible party for one wholesale distributor license, nonresident wholesale distributor registration, or third-party logistics provider permit at any one time;

4. The responsible party shall be employed full time in a managerial position and actively engaged in daily operations of the wholesale distributor, nonresident wholesale distributor, or third-party logistics provider;

5. The responsible party shall be present on a full-time basis at the location of the wholesale distributor, nonresident wholesale distributor, or third-party logistics provider during normal business hours, except for time

periods when absent due to illness, family illness or death, vacation, or other authorized absence; and

6. The responsible party shall be aware of~~,~~ and knowledgeable about~~,~~ all policies and procedures pertaining to the operations of the wholesale distributor, nonresident wholesale distributor, or third-party logistics provider and all applicable state and federal laws related to wholesale distribution of prescription drugs or the legal acts of a third-party logistics provider.

C. The person named as the responsible party on the application shall submit the following with the application:

1. A passport size and quality photograph taken within 30 days of submission of the application;

2. A resume listing employment, occupations, or offices held for the past seven years including names, addresses, and telephone numbers of the places listed;

3. An attestation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth;

4. A federal criminal history record check ~~through the Central Criminal Records Exchange~~; and

5. A description of any involvement by the person with any business, including any investments, other than the ownership of stock in publicly traded company or mutual fund, during the past seven years, which manufactured, administered, prescribed, distributed, or stored drugs and devices and any lawsuits, regulatory actions, or criminal convictions related to drug laws or laws concerning third-party logistics providers or wholesale distribution of prescription drugs in which such businesses were named as a party.

D. Responsibilities of the responsible party.

1. Ensuring that any employee engaged in operations is adequately trained in the requirements for the lawful and appropriate wholesale distribution of prescription drugs or the legal acts of a third-party logistics provider;

2. Requiring any employee who has access to prescription drugs to attest that ~~he~~ the employer has not been convicted of any federal or state drug law or any law relating to third-party logistics providers or to the manufacture, distribution, or dispensing of prescription drugs;

3. Maintaining current working knowledge of requirements for wholesale distributors or third-party logistics providers and assuring continued training for employees;

4. Maintaining proper security, storage, and shipping conditions for all prescription drugs; and

5. Maintaining all required records.

E. Each nonresident wholesale distributor shall designate a registered agent in Virginia for service of any notice or other legal document. Any nonresident wholesale distributor that does not so designate a registered agent shall be deemed to have designated the Secretary of the Commonwealth to be its true and lawful agent, upon ~~who~~ whom may be served all legal process in any action or proceeding against such nonresident wholesale distributor. A copy of any such service of legal documents shall be mailed to the nonresident wholesale distributor by the board by certified mail at the address of record.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC110-50)

Application for a Permit as a Restricted Manufacturer (rev. ~~3/09).~~ 3/2009)

Application for a Permit as a Nonrestricted Manufacturer (rev. ~~3/09).~~ 3/2009)

Application for a Permit as a Warehouser (rev. ~~3/09).~~ 3/2009)

Application for a License as a Wholesale Distributor (rev. ~~3/09).~~ 3/2009)

Application for a Nonresident Wholesale Distributor Registration (rev. ~~9/08).~~ 9/2008)

Application for a License as a Wholesale Distributor - Limited Use for Distribution of Medical Gases Only (rev. 3/2010)~~.~~

Application for a Permit as a Third-Party Logistics Provider (eff. 9/2017)

VA.R. Doc. No. R16-4673; Filed November 27, 2018, 8:49 a.m.

Final Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-690, 18VAC110-20-700, 18VAC110-20-710; adding 18VAC110-20-735).**

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

Effective Date: January 23, 2019.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

Pursuant to Chapters 55 and 168 and Chapters 58 and 110 of the 2017 Acts of Assembly, the amendments authorize issuance of a controlled substances registration to (i) persons who have been trained in the administration of naloxone in order to possess and dispense the drug to persons receiving training and (ii) an entity for the purpose of establishing a bona fide practitioner-patient relationship for prescribing when treatment is provided by telemedicine in accordance with federal rules. The amendments include applicable recordkeeping, security, and storage requirements. The amendments replace emergency regulations currently in effect.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC110-20-690. Persons or entities authorized or required to obtain a controlled substances registration.

A. A person or entity ~~which~~ that maintains or intends to maintain a supply of ~~Schedule~~ Schedules II through Schedule VI controlled substances, other than manufacturers' samples, in accordance with provisions of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) may apply for a controlled substances registration on forms approved by the board.

B. Persons or entities ~~which~~ that may be registered by the board shall include~~, but not be limited to,~~ hospitals without in-house pharmacies, nursing homes without in-house pharmacies that use automated drug dispensing systems, ambulatory surgery centers, outpatient clinics, alternate delivery sites, crisis stabilization units, persons authorized by the Department of Behavioral Health and Developmental Services to train individuals on the administration of naloxone and to dispense naloxone for opioid overdose reversal, and emergency medical services agencies provided such persons or entities are otherwise authorized by law and hold required licenses or appropriate credentials to administer the drugs for which the registration is being sought.

C. In determining whether to register an applicant, the board shall consider factors listed in subsections A and D of § 54.1-3423 of the Code of Virginia and compliance with applicable requirements of this chapter.

1. The proposed location shall be inspected by an authorized agent of the board prior to issuance of a controlled substances registration.

2. Controlled substances registration applications that indicate a requested inspection date~~,~~ or requests that are received after the application is filed~~,~~ shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

3. Requested inspection dates that do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

4. Any person wishing to change an approved location of the drug stock, make structural changes to an existing approved drug storage location, or make changes to a previously approved security system shall file an application with the board and be inspected.

5. Drugs shall not be stocked within the proposed drug storage location or moved to a new location until approval is granted by the board.

D. The application shall be signed by a person who will act as a responsible party for the controlled substances. The responsible party may be a prescriber, nurse, pharmacist, ~~or~~ pharmacy technician for alternate delivery sites, a person authorized by the Department of Behavioral Health and Developmental Services to train individuals on the administration of naloxone and to dispense naloxone for opioid overdose reversal, or other person approved by the board who is authorized to administer the controlled substances.

E. The board may require a person or entity to obtain a controlled substances registration upon a determination that ~~Schedule~~ Schedules II through VI controlled substances have been obtained and are being used as common stock by multiple practitioners and that one or more of the following factors exist:

1. A federal, state, or local government agency has reported that the person or entity has made large purchases of controlled substances in comparison with other persons or entities in the same classification or category.

2. The person or entity has experienced a diversion, theft, or other unusual loss of controlled substances which requires reporting pursuant to § 54.1-3404 of the Drug Control Act.

3. The person or entity has failed to comply with recordkeeping requirements for controlled substances.

4. The person or entity or any other person with access to the common stock has violated any provision of federal, state, or local law or regulation relating to controlled substances.

F. The board may issue a controlled substance registration to an entity at which a patient is being treated by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically for the purpose of establishing a bona fide practitioner-patient relationship and is being prescribed Schedules II through VI controlled substances when such prescribing is in compliance with federal requirements for the practice of telemedicine and the patient is not in the physical presence of a practitioner

registered with the U.S. Drug Enforcement Administration provided:

1. There is a documented need for such registration, and issuance of the registration of the entity is consistent with the public interest;

2. The entity is under the general supervision of a licensed pharmacist or a practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine; and

3. The application is signed by a person who will act as the responsible party for the entity for the purpose of compliance with provisions of this subsection. The responsible party shall be a prescriber, nurse, pharmacist, or other person who is authorized by provisions of § 54.1-3408 of the Code of Virginia to administer controlled substances.

18VAC110-20-700. Requirements for supervision for controlled substances registrants.

A. A practitioner licensed in Virginia shall provide supervision for all aspects of practice related to the maintenance and use of controlled substances as follows:

1. In a hospital or nursing home without an in-house pharmacy, a pharmacist shall supervise.

2. In an emergency medical services agency, the operational medical director shall supervise.

3. For any other type of applicant or registrant, a pharmacist or a prescriber whose scope of practice is consistent with the practice of the applicant or registrant and who is approved by the board may provide the required supervision.

B. The supervising practitioner shall approve the list of drugs ~~which~~ that may be ordered by the holder of the controlled substances registration; possession of controlled substances by the entity shall be limited to such approved drugs. The list of drugs approved by the supervising practitioner shall be maintained at the address listed on the controlled substances registration.

C. Access to the controlled substances shall be limited to (i) the supervising practitioner or to those persons who are authorized by the supervising practitioner and who are authorized by law to administer drugs in Virginia; (ii) such other persons who have successfully completed a training program for repackaging of prescription drug orders in a CSB, BHA, or PACE site as authorized in § 54.1-3420.2 of the Code of Virginia; ~~or~~ (iii) other such persons as designated by the supervising practitioner or the responsible party to have access in an emergency situation, or (iv) persons authorized by the Department of Behavioral Health and Developmental Services to train individuals on the administration of naloxone and to dispense naloxone for opioid overdose reversal. If approved by the supervising practitioner, pharmacy technicians may have access for the purpose of delivering controlled substances to the registrant, stocking controlled substances in automated dispensing devices, conducting inventories, audits and other recordkeeping requirements, overseeing delivery of dispensed prescriptions at an alternate delivery site, and repackaging of prescription drug orders retained by a CSB, BHA, or PACE site as authorized in § 54.1-3420.2 of the Code of Virginia. Access to stock drugs in a crisis stabilization unit shall be limited to prescribers, nurses, or pharmacists.

D. The supervising practitioner shall establish procedures for and provide training as necessary to ensure compliance with all requirements of law and regulation, including~~, but not limited to,~~ storage, security, and recordkeeping.

E. Within 14 days of a change in the responsible party or supervising practitioner assigned to the registration, either the responsible party or outgoing responsible party shall inform the board, and a new application shall be submitted indicating the name and license number, if applicable, of the new responsible party or supervising practitioner.

18VAC110-20-710. Requirements for storage and security for controlled substances registrants.

A. Drugs shall be stored under conditions ~~which~~ that meet USP-NF specifications or manufacturers' suggested storage for each drug.

B. Any drug ~~which~~ that has exceeded the expiration date shall not be administered; it shall be separated from the stock used for administration and maintained in a separate, locked area until properly disposed.

C. If a controlled substances registrant wishes to dispose of unwanted or expired ~~Schedule~~ Schedules II through VI drugs, he shall transfer the drugs to another person or entity authorized to possess and to provide for proper disposal of such drugs.

D. Drugs shall be maintained in a lockable cabinet, cart, device, or other area ~~which~~ that shall be locked at all times when not in use. The keys or access code shall be restricted to the supervising practitioner and persons designated access in accordance with 18VAC110-20-700 C.

E. In a facility not staffed 24 hours a day, the drugs shall be stored in a fixed and secured room, cabinet or area ~~which~~ that has a security device for the detection of breaking ~~which~~ that meets the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.

2. The installation and device shall be based on accepted alarm industry standards.

3. The device shall be maintained in operating order, have an auxiliary source of power, be monitored in accordance

with accepted industry standards, be maintained in operating order; and shall be capable of sending an alarm signal to the monitoring entity if breached and the communication line is not operational.

4. The device shall fully protect all areas where prescription drugs are stored and shall be capable of detecting breaking by any means when activated.

5. Access to the alarm system shall be restricted to only designated and necessary persons, and the system shall be activated whenever the drug storage areas are closed for business.

6. An alarm system is not required for researchers, animal control officers, humane societies, alternate delivery sites as provided in 18VAC110-20-275, emergency medical services agencies stocking only intravenous fluids with no added drug, persons authorized by the Department of Behavioral Health and Developmental Services to train individuals on the administration of naloxone and to dispense naloxone for opioid overdose reversal, and teaching institutions possessing only Schedule VI drugs.

18VAC110-20-735. Requirements for dispensing of naloxone by trained individuals.

A. Persons authorized by the Department of Behavioral Health and Developmental Services to train individuals on the administration of naloxone and dispense naloxone for opioid overdose reversal pursuant to subsection Y of § 54.1-3408 of the Code of Virginia shall maintain the following records:

1. The prescriber's standing order issued in accordance with subsection Y of § 54.1-3408 of the Code of Virginia authorizing the trained individual to dispense naloxone.

2. Invoices or other records showing receipts of naloxone shall be maintained, but may be stored in an electronic database or record as an electronic image that provides an exact, clearly legible image of the document or in secured storage either on site or off site. All records in off-site storage or database shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

3. A manual or electronic log indicating the name, strength, lot, expiration date, and quantity of naloxone transferred to and from the controlled substances registration location to the off-site training location, along with date of transfer and the name of the trained individual approved by the Department of Behavioral Health and Developmental Services.

4. Record of dispensing indicating the name of the person receiving naloxone, address or contact information if available, date of dispensing, drug name, strength, quantity, lot number, expiration date, and the name of the trained individual approved by the Department of Behavioral Health and Developmental Services to dispense naloxone.

B. The naloxone shall be labeled with directions for use in accordance with the prescriber's standing order, date of dispensing, name of person receiving the drug, drug name and strength, and the name and the telephone number for the entity associated with the controlled substances registration.

C. The naloxone shall be stored and transported under appropriate storage conditions in accordance with the manufacturer's directions to protect it from adulteration.

D. In the event of a manufacturer recall, the supervising practitioner or responsible party associated with the controlled substances registration certificate shall ensure compliance with recall procedures as issued by the manufacturer, U.S. Food and Drug Administration, or board to ensure an affected drug is transferred to a person or entity authorized to possess the drug for return or destruction.

E. Except for a prescriber's standing order, which shall be maintained on site for a period of not less than two years from the date of the last dispensing, records shall be filed chronologically and maintained for a period of not less than two years from the date of transaction.

VA.R. Doc. No. R17-5048; Filed November 21, 2018, 1:26 p.m.

Emergency Regulation

Title of Regulation: **18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehousers (adding 18VAC110-50-55).**

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

Effective Dates: December 13, 2018, through June 12, 2020.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Preamble:

Section 2.2-4011 B of the Code of Virginia provides that agencies may adopt emergency regulations in situations in which Virginia statutory law requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

Chapters 241 and 242 of the 2018 Acts of Assembly, which enacted § 54.1-3415.1 of the Code of Virginia, establishes the requirements for delivery of Schedule VI devices directly to an ultimate user or consumer on behalf of a medical equipment supplier upon a valid order from a prescriber or upon request from the medical director of a home health agency, nursing home, assisted living facility,

or hospice. This emergency regulation adding 18VAC110-50-55 is necessary to implement Chapters 241 and 242.

18VAC110-50-55. Delivery of Schedule VI devices.

A. In accordance with the provisions of subsection A of § 54.1-3415.1 of the Code of Virginia, a manufacturer, nonresident manufacturer, wholesale distributor, nonresident wholesaler distributor, third-party logistics provider, nonresident third-party logistics provider, warehouser, or nonresident warehouser licensed, permitted, or registered in Virginia may deliver Schedule VI prescription devices directly to an ultimate user or consumer on behalf of a medical equipment supplier.

1. Such delivery shall only occur in accordance with an agreement between a delivering entity named in this subsection and a medical equipment supplier in compliance with law and regulation.

2. The agreement shall be between an individual delivering entity or multiple delivering entities under shared ownership and an individual medical equipment supplier or multiple medical equipment suppliers under shared ownership. The agreement shall be applicable to all ultimate users or consumers receiving services from the medical equipment supplier who require delivery of Schedule VI prescription devices.

3. The medical equipment supplier shall represent to the delivering entity that it has complied with the provisions of § 54.1-3415.1 of the Code of Virginia regarding the existence of a valid order from a prescriber for the delivery of a Schedule VI prescription device to an ultimate user or consumer. Validation of orders of prescribers shall be the responsibility of the medical equipment supplier upon request of the board or delivering entity.

B. In accordance with the provisions of subsection B of § 54.1-3415.1 of the Code of Virginia, a manufacturer, nonresident manufacturer, wholesale distributor, nonresident wholesaler distributor, third-party logistics provider, nonresident third-party logistics provider, warehouser, or nonresident warehouser licensed, permitted, or registered in Virginia may deliver Schedule VI prescription devices directly to an ultimate user's or consumer's residence to be administered by persons authorized to administer such devices, provided that (i) such delivery is made on behalf of a medical director of a home health agency, nursing home, assisted living facility, or hospice who has requested the distribution of the Schedule VI prescription device and directs the delivery of such device to the ultimate user's or consumer's residence and (ii) the medical director on whose behalf such Schedule VI prescription device is being delivered has entered into an agreement with the manufacturer, nonresident manufacturer, wholesale distributor, nonresident wholesale distributor, warehouser, nonresident warehouser, third-party logistics provider, or nonresident third-party logistics provider for such delivery.

1. Such delivery shall only occur in accordance with an agreement between a delivering entity authorized in this subsection and a medical director of a home health agency, nursing home, assisted living facility, or hospice and in compliance with law and regulation.

2. The agreement shall be between an individual delivering entity or multiple delivering entities under shared ownership and the medical director of an individual home health agency, nursing home, assisted living facility, or hospice, or multiple such entities under shared ownership. The agreement shall be applicable to all ultimate users or consumers of the home health agency, nursing home, assisted living facility, or hospice who require delivery of Schedule VI prescription devices.

3. The home health agency, nursing home, assisted living facility, or hospice shall represent to the delivering entity that it has complied with provisions of § 54.1-3415.1 of the Code of Virginia regarding the existence of a request from a prescriber for the delivery of a Schedule VI prescription device to an ultimate user or consumer. Validation of the request from a prescriber shall be the responsibility of the home health agency, nursing home, assisted living facility, or hospice upon request of the board or delivering entity.

C. The agreement, as required by subdivisions A 1 and B 1 of this section, shall be in written or electronic format and shall be retained in a format available upon request to the board at all times the agreement is in effect and for two years after the date the agreement is terminated or concluded.

D. An agreement shall not contain any patient specific or patient health information that would be subject to the provisions of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).

VA.R. Doc. No. R19-5526; Filed December 12, 2018, 2:27 p.m.

BOARD OF PHYSICAL THERAPY

Fast-Track Regulation

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-131).**

Statutory Authority: §§ 54.1-2400 and 54.1-3474 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 23, 2019.

Effective Date: February 10, 2019.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300,

Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Board of Physical Therapy the authority to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system.

Purpose: The purpose of the amended regulation is to encourage participation in the policy-making and disciplinary work of the board to give licensees a better understanding of the laws and regulations governing their practice. While a licensee can satisfy up to two hours of Type 2 continuing education with attendance at a board meeting or a hearing, the licensee is still required to have 20 Type 1 hours of approved continuing education for physical therapists and 15 Type 1 hours for physical therapist assistants necessary to acquire new knowledge and skills. Therefore, the public health is served by a better understanding of ethical practice, but public safety is not sacrificed by permitting this use of two hours of Type 2 continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours of attendance at board meetings or disciplinary hearings is voluntary and less restrictive. A licensee is not required to attend but may be credited with continuing education hours for doing so. The provision is permissive and not controversial.

Substance: The board has adopted an amendment to the regulation to allow physical therapists and physical therapist assistants to count two hours of the Type 2 hours allowed for renewal to be satisfied by attending a board meeting or an informal conference or a formal hearing conducted by the board.

Issues: The advantage to the public is the incentive given for licensees to participate in the policy and disciplinary activities of the board in exchange for credit toward meeting continuing education requirements. There are no disadvantages to the public.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Physical Therapy (Board) proposes to allow physical therapists and physical therapist assistants to count up to two hours of required Type 2 continuing education hours to be satisfied by attending a board meeting, an informal conference, or a formal hearing.

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

Estimated Economic Impact. In order to renew an active license biennially, a physical therapist or a physical therapist assistant must complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. Up to 10 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants may be Type 2 activities or courses. The current regulation states that Type 2 activities may include but not be limited to consultation with colleagues, independent study, and research or writing on subjects related to practice. Up to two of the Type 2 continuing education hours may be satisfied through delivery of physical therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. The Board proposes to allow attendance at a meeting of the Board or disciplinary proceeding conducted by the Board to count for up to two hours of required Type 2 continuing education hours. According to the Department of Health Professions, continuing education hours would be granted on a one-for-one basis for the time of attendance (up to the two-hour limit).

Similar to consultation with colleagues, attendance of board meetings or disciplinary proceeding would help practitioners be aware of current issues affecting the profession. Attendance of Board meetings would enable licensees to hear discussion of the statutes and regulations that directly affect physical therapy licensure and practice, including for recent examples, discussions about dry needling, consideration of participation in a physical therapy licensure compact, and tools available for physical therapists to gauge continuing competency, as well as possible legislation and regulatory proposals. Attendance of disciplinary proceedings would give licensees an opportunity to see/hear first-hand the practice issues/violations that are seen by the Board in disciplinary cases and how the Board sanctions violations. This would not only be an educational experience, it may also have a deterrent impact by virtue of educating practitioners about actions or conduct they should avoid in their practice.

Businesses and Entities Affected. The proposed amendment potentially affects the 8,032 physical therapists and 3,348 physical therapist assistants licensed in the Commonwealth.[1] Many physical therapists and physical therapist assistants work for large health systems. It is unknown how many work for small businesses.

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 significantly 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 significantly 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]Data source: Department of Health Professions

Agency's Response to Economic Impact Analysis: The Board of Physical Therapy concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The amendment allows physical therapists and physical therapist assistants to satisfy up to two hours of the total Type 2 continuing education hours allowed for license renewal to be satisfied by attending a board meeting or an informal conference or a formal hearing conducted by the board.

18VAC112-20-131. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall consider the following: (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of the following:

1. A minimum of 20 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants shall be in Type 1 courses. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

a. The Virginia Physical Therapy Association;

b. The American Physical Therapy Association;

c. Local, state, or federal government agencies;

d. Regionally accredited colleges and universities;

e. Health care organizations accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation;

f. The American Medical Association - Category I Continuing Medical Education course;

g. The National Athletic Trainers' Association; or

h. The Federation of State Boards of Physical Therapy.

2. No more than 10 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization but which shall be related to the clinical practice of physical therapy. Type 2 activities may include consultation with colleagues, independent study, and research or writing on subjects related to practice. Up to two of the Type 2 continuing education hours may be satisfied through delivery of physical therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. Up to two of the Type 2 continuing education hours may be satisfied by attendance at a meeting of the board or disciplinary proceeding conducted by the board.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

4. Documentation of graduation from a transitional doctor of physical therapy program may be provided as evidence of completion of continuing competency requirements for the biennium in which the physical therapist was awarded the degree.

5. A physical therapist who can document that he attained at least Level 2 on the FSBPT assessment tool may receive

five hours of Type 1 credit for the biennium in which the assessment tool was taken. A physical therapist who can document that he attained at least Level 3 or 4 on the FSBPT assessment tool may receive 10 hours of Type 1 credit for the biennium in which the assessment tool was taken. Continuing competency credit shall only be granted for the FSBPT assessment tool once every four years.

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure by examination in Virginia.

D. The licensee shall retain his records on the completed form with all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

VA.R. Doc. No. R19-5366; Filed November 21, 2018, 1:48 p.m.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

Fast-Track Regulation

Title of Regulation: **18VAC155-11. Public Participation Guidelines (amending 18VAC155-11-50).**

Statutory Authority: §§ 2.2-4007.02 and 54.1-201 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 23, 2019.

Effective Date: February 7, 2019.

Agency Contact: Eric L. Olson, Executive Director, Board for Waste Management Facility Operators, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8511, FAX (866) 430-1033, or email wastemgt@dpor.virginia.gov.

Basis: Section 2.2-4007.02 of the Code of Virginia mandates each agency develop, adopt, and use Public Participation Guidelines for soliciting the input of interested parties in the formation and development of its regulations. Chapter 795 of the 2012 Acts of Assembly provides that in formulating any regulation or in evidentiary hearings on regulations, an interested party shall be entitled to be accompanied by and represented by counsel or other qualified representative. The Board for Waste Management Facility Operators is the promulgating entity.

Purpose: The purpose of this action is clarity and conformity to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). 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: As the amendment merely conforms the regulation to statute and was recommended by the Department of Planning and Budget, the rulemaking is not expected to be controversial and is appropriate for the fast-track rulemaking process.

Substance: The amendment provides that interested persons may be accompanied by and represented by counsel or other representative when presenting their views in the promulgation of any regulatory action.

Issues: As the amendment merely conforms the regulation to statute, the primary advantage to the public and the agency is to ensure consistency between the law and regulation, which should reduce the chance of confusion. 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 Chapter 795 of the 2012 Acts of Assembly,[1] the Board for Waste Management Facility Operators (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 § 2.2-4007.02 of the Code of Virginia. "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 Board for Waste Management Facility Operators concurs with the approval of the economic impact analysis.

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

18VAC155-11-50. 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. R19-5457; Filed November 26, 2018, 11:07 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Fast-Track Regulation

Title of Regulation: **22VAC40-293. Locality Groupings (amending 22VAC40-293-10).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 23, 2019.

Effective Date: February 7, 2019.

Agency Contact: Mark Golden, TANF Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7357, or email mark.golden@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia places responsibility on the State Board of Social Services to make rules and regulations necessary to carry out the purpose and intent of the Code of Virginia as related to social services. Item 342 O of the 2017 Appropriation Act provides, "The Board of Social Services shall combine Groups I and II for the purposes of Temporary Assistance to Needy Families cash benefits and use the Group II rates for the new group."

Purpose: This regulation establishes criteria for local departments of social services to change Temporary Assistance to Needy Families (TANF) locality groupings. Each local area is placed in a locality grouping, which determines payment levels for recipients of TANF in that locality. The regulation provides the required data and the criteria to determine if a locality may switch to another locality grouping and change payment levels. The TANF Program provides an important safety net to low-income families and is essential to protecting the welfare of eligible citizens. The locality groupings regulation ensures that localities administer the program in a manner that best meets the needs of citizens.

Rationale for Using Fast-Track Rulemaking Process: The 2017 General Assembly action amending the budget language was not controversial nor was it controversial when the change was implemented effective July 1, 2017. Because this regulatory action updates the regulation to reflect the intent of the budget change, it is not expected to be controversial.

Substance: References to three separate groups is being replaced with reference to "one of two groups." This approach was determined to be a clearer, more streamlined change that is in keeping with practice, as opposed to eliminating "Group I" and having the regulation reference just Groups II and III.

Issues: Localities are divided into two groups for the purposes of determining payment levels for recipients of TANF. Previously, there were three groups of localities. The definition of "locality groupings" is being amended to reflect two groups. Amending the regulation will ensure that it is reflective of the 2017 Appropriation Act (Chapter 836 of the 2017 Acts of Assembly) and current practice, and that program rules are transparent to the public. There are no disadvantages to the public or to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services proposes to amend the definition of locality groupings to reflect a statutory change.

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

Estimated Economic Impact. This regulation contains a definition for locality groupings, which is used in determining the amount of Temporary Assistance for Needy Families (TANF) in different geographic locations. Originally, there were three distinct locality groupings: Group I, Group II, and Group III. Item 342 O, of the 2017 Appropriation Act[1] moved all localities in Group I into Group II, which went into effect on July 1, 2017. The proposed change merely reflects that statutory amendment. Since this regulatory action does not reflect any change in administration of TANF benefits, no economic effect is expected other than eliminating conflicting information between the Code of Virginia and the regulation.

Businesses and Entities Affected. There are approximately 21,000 TANF families of which 72% are in Group II localities and 28% are in Group III localities.

Localities Particularly Affected. The proposed regulation reflects the fact that a recent statutory amendment moved Group I localities (i.e., Counties of Accomack, Alleghany, Amelia, Amherst, Appomattox, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Carroll, Charles City, Charlotte, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henry, Highland, Isle of Wight, King & Queen, King William, Lancaster, Lee, Louisa, Lunenburg, Madison, Matthews, Mecklenburg, Middlesex,

Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Pulaski, Rappahannock, Richmond, Rockbridge, Russell, Scott, Shenandoah, Smyth, Southampton, Surry, Tazewell, Washington, Westmoreland, Wise, Wythe, and Cities of Bristol, Buena Vista, Clifton Forge, Danville, Emporia, Franklin, Galax, Norton, Suffolk) into Group II localities (i.e., Counties of Albemarle, Chesterfield, Henrico, Loudoun, Roanoke, Rockingham, Warren, and Cities of Chesapeake, Covington, Harrisonburg, Hopewell, Lexington, Lynchburg, Martinsville, Norfolk, Petersburg, Portsmouth, Radford, Richmond, Roanoke, Virginia Beach, Williamsburg, and Winchester).

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. No costs or other effects are expected on small businesses.

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]https://budget.lis.virginia.gov/item/2017/1/HB1500/Chapter/1/342/

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:

Item 342 O of Chapter 836 of the 2017 Acts of Assembly, the 2017 Appropriation Act, eliminated the Group I Temporary Assistance for Needy Family (TANF) Services locality grouping and moved all Group I TANF localities to Group II as of July 1, 2017. The amendment changes the definition of "locality groupings" to be consistent with the Appropriation Act, eliminating the reference to Group I.

22VAC40-293-10. Definitions.

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

"Locality groupings" means the placement of a locality into ~~either Group I, Group II, or Group III~~ one of two groups, which determines the Temporary Assistance for Needy Families (TANF) payment level for families residing in that locality.

"Standard of assistance" means the TANF payment standard that is graduated by family size.

"State board" means the State Board of Social Services.

VA.R. Doc. No. R19-5462; Filed November 27, 2018, 11:58 a.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Fast-Track Regulation

Title of Regulation: **23VAC10-370. Cigarette Tax Regulations (amending 23VAC10-370-20, 23VAC10-370-40, 23VAC10-370-70, 23VAC10-370-90, 23VAC10-370-100, 23VAC10-370-110; repealing 23VAC10-370-80, 23VAC10-370-120, 23VAC10-370-180).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 25, 2019.

Effective Date: March 12, 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. Section 58.1-1016 of the Code of Virginia authorizes the Department of Taxation to administer the cigarette tax.

Purpose: As a result of a periodic review of the Cigarette Tax Regulations initiated by the Department of Taxation on August 3, 2016, and completed September 26, 2016, the department has determined that the regulation should be amended because the majority of the regulation sections are outdated and provide no guidance beyond the plain meaning

of the statutes to which they apply. This action removes language that provides no guidance beyond the plain meaning of the statutes.

The amendment of the regulation does not reflect any change in current tax policy and has no impact on the administration of the cigarette tax. The regulation is amended to reflect statutory changes and to remove provisions that paraphrase statutes that are clear and unambiguous. This action amends the regulation to (i) remove language authorizing the use of meter impressions to evidence payment of the tax, (ii) reflect the department's policy that Virginia revenue stamps are heat applied stamps that may be applied by machine or by hand, and (iii) clarify that only duly qualified stamping agents may purchase stamps and apply them to cigarettes.

This action repeals 23VAC10-370-80, 23VAC10-370-120, and 23VAC10-370-180 as they are outdated and provide no guidance beyond the plain meaning of the statutes to which they apply. The repealed sections are not necessary to protect the public health, safety, or welfare. A regulation that is not necessary to interpret the law or to protect the public health, safety, or welfare violates the general principles set forth in Governor Ralph S. Northam's Executive Order 14 (2018 amended) signed July 16, 2018.

Rationale for Using Fast-Track Rulemaking Process: The department is using the fast-track rulemaking process because the amendment of the regulation to remove language that is outdated and provides no guidance beyond the plain meaning of the statutes is expected to be noncontroversial. No comments were received during the periodic review of the regulation.

Substance: The Commonwealth imposes a state cigarette tax at the rate of 1.5 cents per cigarette (30 cents per pack of 20 cigarettes), which is paid by stamping agents through the purchase of stamps. The revenues from the cigarette tax are dedicated to the Health Care Fund and used solely for the provision of health care services, including Medicaid payments; disease diagnosis, prevention, and control; and community health services. The regulatory action does not reflect any change in current tax policy and will have no impact on the administration of the cigarette tax.

This action repeals 23VAC10-370-80, 23VAC10-370-120, and 23VAC10-370-180 as they are outdated and provide no guidance beyond the plain meaning of the statutes to which they apply.

This action amends 23VAC10-370-40 to remove language authorizing the use of meter impressions to evidence payment of the tax. The department has not allowed meter impressions for at least 17 years. This action will also remove stamping requirements reflecting statutory law that has been amended.

This action amends 23VAC10-370-70 to remove language that is outdated and provides no guidance beyond the plain meaning of the statute to which it applies. This section also will be amended to remove language authorizing the use of meter impressions to evidence payment of the tax. The statute does not authorize the use of meter impressions, and the department has never implemented the use of meter impressions. This section also is amended to reflect the mandate of § 58.1-1010 of the Code of Virginia that only wholesale dealers who have qualified as stamping agents under § 58.1-1011 of the Code of Virginia may apply revenue stamps to cigarettes. This section is amended to reflect the department's policy that Virginia revenue stamps are heat applied stamps that may be applied by machine or by hand.

This action amends 23VAC10-370-90 to remove language that is outdated and provides no guidance beyond the plain meaning of the statute to which it applies. This section also is amended to reflect the mandate of § 58.1-1010 that only wholesale dealers who have qualified as stamping agents under § 58.1-1011 may apply revenue stamps to cigarettes.

This action amends 23VAC10-370-100 to remove language that is outdated and provides no guidance beyond the plain meaning of the statute to which it applies. This section is amended to reflect the mandate of § 58.1-1010 that only wholesale dealers who have qualified as stamping agents under § 58.1-1011 may apply revenue stamps to cigarettes.

This action amends 23VAC10-370-110 to reflect the mandate of § 58.1-1010 that only wholesale dealers who have qualified as stamping agents under § 58.1-1011 may apply revenue stamps to cigarettes.

Issues: As this regulatory action updates the Cigarette Tax Regulations to reflect current law and remove language that is outdated and provides no additional guidance to statutes that are clear and unambiguous, there are no issues or disadvantages to the Commonwealth, the agency, and the public associated with this regulatory action. The primary advantage to the Commonwealth, the agency, and the public is the repeal of regulatory text that is unnecessary and in some cases contrary to the statutory law because of changes in the statutory law that have been made since the regulation was promulgated. The remaining regulation will be up to date.

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 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 cigarette tax. Numerous statutory changes in the 2004, 2005, 2010, and 2015 Virginia General Assembly sessions amended the cigarette 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 cigarette tax, no economic effect is expected other than eliminating conflicting information between the Code of Virginia and the regulation.

Businesses and Entities Affected. This regulation applies to approximately 95 cigarette tax stamping permit holders.

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. No costs or other effects are expected on small businesses.

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.

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 reflect statutory changes and remove provisions that paraphrase clear and unambiguous statutes, including (i) removing language authorizing the use of meter impressions to evidence payment of the tax; (ii) reflecting the department's policy that Virginia revenue stamps are heat applied stamps that may be applied by machine or by hand; (iii) clarifying that only duly qualified stamping agents may purchase stamps and apply them to cigarettes; and (iv) repealing 23VAC10-370-80, 23VAC10-370-120, and 23VAC10-370-180, which are outdated and provide no guidance beyond the plain meaning of the statutes to which they apply.

23VAC10-370-20. Tax levied; rate.

The Virginia cigarette excise tax ~~is imposed at the rate of one and one quarter mills on each cigarette and~~ is required to be paid by every person within the Commonwealth who sells, stores, or receives cigarettes ~~made of tobacco or any substitute thereof,~~ for the purpose of distribution within this ~~State~~ state except a retail dealer or other person who sells, stores, or receives cigarettes with Virginia tax stamps affixed thereto.

~~Every person meeting the requirements of a permitted wholesaler under 23VAC10-370-120 shall be required to remit the tax on cigarettes for sale, storage or distribution in this state and be required to comply with all other provisions of this chapter.~~

23VAC10-370-40. How paid; affixing of stamps~~; records of dealers; penalty~~.

A. ~~Generally.~~ ~~The~~ Virginia cigarette excise ~~tax~~ ~~shall be paid by the wholesale dealer who has qualified as such under the provisions of 23VAC10-370-120 or retail dealer who purchases unstamped cigarettes. Such payment of~~ Payment of the tax shall be represented by a stamp~~, or stamps, or meter impression (hereinafter stamp)~~ affixed to each package of cigarettes. The stamp value shall evidence the amount of tax imposed upon the individual package to which it is affixed.

~~B. Affixing of stamps. Every wholesale or retail dealer who receives unstamped cigarettes shall, within one hour after receipt of such cigarettes, begin affixing the proper stamp to each individual cigarette container.~~

~~1. The stamps shall be affixed to each individual container in such a manner that the removal will require continued application of water or steam.~~

~~2. The wholesale or retail dealer shall continue stamping the unstamped containers of cigarettes until all of the products subject to tax have been stamped.~~

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[1]See http://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1515.

[2]See http://lis.virginia.gov/cgi-bin/legp604.exe?042+ful+CHAP0003, http://lis.virginia.gov/cgi-bin/legp604.exe?041+ful+CHAP1029, http://lis.virginia.gov/cgi-bin/legp604.exe?051+ful+CHAP0028, http://lis.virginia.gov/cgi-bin/legp604.exe?101+ful+CHAP0701, http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0738.

~~3.~~ B. Cigarettes destined for sale outside Virginia and in the inventory of a wholesale dealer engaged in interstate business~~,~~ may be set aside and remain unstamped. Such tax exempt interstate stock shall be kept entirely separate from taxable stock in a manner to prevent the commingling of the interstate stock with the taxable stock.

~~C. Records of dealers. Every wholesale and retail dealer subject to imposition of the tax shall keep a record of purchases of all cigarettes, and retain all books and records, pertaining to the purchase and sale of such cigarettes.~~

~~Every wholesale dealer shall at the time of shipping or delivering any cigarettes make and retain a duplicate invoice which shows full and complete details of the sale or delivery of the taxable cigarettes.~~

~~D. Penalty for failure to comply. Any wholesaler or retailer who refuses or fails to comply with any of the provisions within this section shall be, upon conviction, guilty of a Class 1 misdemeanor.~~

23VAC10-370-70. Forms and kinds of containers, methods of breaking packages, and methods of affixing stamps~~; penalty for interfering with enforcement of article~~.

A. Generally. The Department of Taxation requires each package of cigarettes to have a stamp ~~or meter impression~~ conspicuously affixed, showing that the proper Virginia cigarette tax has been paid.

B. Methods of affixing stamps. Each ~~wholesale or retail dealer~~ stamping agent may affix such stamp ~~or meter impression~~ by using ~~(1) hand-applied stamps, (2)~~ heat stamps attached to the cellophane wrappers and applied by a fusion stamping machine~~,~~ or ~~(3) Virginia tax paid impressions on the cellophane wrappers applied by cigarette tax stamping meter~~ by hand.

~~C. Penalty for interfering with enforcement of article. Any person who is subject to the Virginia cigarette excise tax who refuses to allow the Department of Taxation's agents to fully inspect his premises, or in any way interferes with any agent of the Department in the performance of his duties in enforcing the statutes or regulations relating to the cigarette tax shall be, upon conviction, guilty of a Class 2 misdemeanor.~~

23VAC10-370-80. ~~Documents touching purchase, sale, etc., of cigarettes to be kept for three years, subject to inspection.~~ (Repealed.)

~~A. Generally. Every person who receives, stores, sells, handles or transports cigarettes in any manner whatsoever, is required to preserve all invoices, books, cancelled checks, or other documents relating to the purchase, sale, exchange, receipt or transportation of all cigarettes for a period of three years.~~

~~B. Examination of records. All invoices, books, cancelled checks and records dealing with cigarettes shall be subject to audit and inspection by any duly authorized representative of the Department during the usual business hours of the day.~~

~~C. Penalty for failing to keep records. Any person who fails or refuses to keep and preserve the records as required, or who fails or refuses to allow an audit or inspection of the records required, shall be, upon conviction, guilty of a Class 2 misdemeanor.~~

23VAC10-370-90. ~~Monthly reports of wholesale dealers~~ Cigarette tax credit certificates.

~~A. Generally. Every wholesale dealer qualified as such under the provisions of 23VAC10-370-120, shall file monthly reports, with the Department of Taxation, covering the purchase or receipt of all cigarettes during the preceding month. Such report must be filed between the first and tenth of each month, for the preceding month.~~

~~B. Information required on the monthly report. The report shall contain detailed information on: (1) tax value of all unstamped cigarettes on hand first day of month; (2) tax value of all unstamped cigarettes actually received during month; (3) tax value of unstamped cigarettes sold during the month; (4) tax value of unstamped cigarettes on hand last day of month; (5) gross tax value of Virginia tobacco revenue stamps on hand and unaffixed first day of month; (6) gross tax value of Virginia tobacco revenue stamps actually received during month; (7) gross tax value of Virginia tobacco revenue stamps on hand and unaffixed last day of month.~~

~~C. Examination of invoices. If the Department of Taxation examines the invoices of any wholesale dealer and the dealer is unable to furnish evidence that sufficient tobacco revenue stamps were purchased to cover unstamped cigarette purchases, the prima facie presumption shall be that such cigarettes were sold without proper stamps. Such presumption shall be that the sales were made in violation of 23VAC10-370-40.~~

~~D. Penalty for failure to file. Any qualified wholesale dealer who fails or refuses to timely file monthly reports as required herein shall be, upon conviction, guilty of a Class 3 misdemeanor.~~

~~E. Credit for erroneously applied stamps and Virginia stamped unsalable cigarettes returned to the manufacturer.~~ Any qualified ~~wholesale dealer~~ stamping agent who erroneously applies Virginia revenue stamps to cigarettes or applies Virginia stamps to unsalable cigarettes ~~which~~ that are returned to the manufacturer~~,~~ may apply to the Department of Taxation for a cigarette tax credit certificate.

1. Application for a cigarette tax credit certificate should be accompanied by substantiating evidence showing the circumstances surrounding the erroneously applied stamps, the quantity of stamps erroneously applied, and resolution of the situation. Application for credit certificate for unsalable cigarettes ~~which~~ that are returned to the manufacturer should be accompanied by a manufacturer's affidavit or manufacturer's statement that such quantity and package size of cigarettes were actually returned.

2. If the wholesaler has reasonably satisfied the Department of Taxation that the credit is due, the ~~Department~~ department shall issue a tobacco tax credit certificate.

3. The tobacco tax credit certificate may be utilized for subsequent tax stamp purchases.

4. If cigarettes are destroyed by fire or other disaster prior to stamping, application for a credit against accountability may be made with the ~~Department~~ department. If cigarettes are destroyed by fire or other disaster after cigarette stamps are applied, application for a tobacco tax credit certificate or tax refund may be made with the ~~Department~~ department. The application should be made as set out in subdivision 1 of this ~~subsection~~ section.

23VAC10-370-100. Preparation, design and sale of stamps; unlawful sale of stamps a felony.

~~A. Generally.~~ Virginia revenue stamps (cigarette tax stamps) will be prepared and offered for sale by the Department of Taxation ~~and may be purchased only from the Department of Taxation~~. It shall be unlawful for any person~~,~~ other than the Department of Taxation~~,~~ to sell tobacco revenue stamps not affixed to cigarettes sold.

1. ~~Virginia revenue~~ State cigarette tax stamps may be purchased only from the Department of Taxation~~, Richmond, Virginia, or from certain district offices of the department~~ or ~~certain commissioners of the revenue, which may change from time to time~~ authorized city or county officers. Specific information on current locations will be provided by the Department of Taxation upon request.

2. Any purchase of Virginia revenue stamps must be made with cash, money order, cashier's check, or certified check unless bonding arrangements have been previously made with the Department of Taxation.

3. The wholesale dealer will be required to bear the burden for any postage and shipping charges for any Virginia revenue stamps shipped or mailed.

~~B. Penalty on unlawful sale of stamps. Any person unlawfully selling Virginia revenue stamps, whether the stamps are genuine or counterfeit, shall be, upon conviction, guilty of a Class 6 felony.~~

~~C. Discount on sale of stamps to qualified wholesalers. Qualified wholesalers, as regulated in 23VAC10-370-120, who purchase Virginia revenue stamps for use on taxable cigarettes sold and delivered by them shall be entitled to a discount.~~

~~1. For purposes of discount, carton shall mean (a) ten packs of cigarettes, each containing twenty cigarettes or, (b) nine packs of cigarettes, each containing twenty-five cigarettes.~~

~~2. The discount on sale of stamps to qualified wholesalers shall be two and one-half ($0.025) cents per carton of 10 packs of cigarettes, each containing twenty cigarettes and two and one-quarter ($0.0225) cents per carton of nine packs of cigarettes, each containing 25 cigarettes.~~

23VAC10-370-110. Sale of unstamped cigarettes by ~~wholesale dealers; penalty~~ stamping agents.

A. Generally. A ~~wholesale dealer, who is qualified under 23VAC10-370-120,~~ stamping agent may sell cigarettes in interstate commerce without affixing Virginia revenue stamps if such cigarettes are sold and shipped or delivered to persons outside this state. However, cigarettes without Virginia revenue stamps affixed~~,~~ may be sold in interstate commerce only if~~: (1)~~ (i) such cigarettes are sold to persons engaged in business as dealers in cigarettes in other states~~; (2),~~ (ii) such cigarettes are purchased from the ~~wholesale dealer~~ stamping agent exclusively for resale in other states~~;~~ and ~~(3)~~ (iii) such cigarettes are at the time of sale properly stamped with revenue stamps of other states.

B. Other sales of unstamped cigarettes by ~~wholesale dealers~~ stamping agents. A ~~duly qualified wholesale dealer~~ stamping agent may also sell cigarettes without Virginia revenue stamps affixed thereto when~~: (1)~~ (i) such cigarettes are sold to the United States or any of its instrumentalities for resale to or use or consumption by members of the armed services or to the Veterans Canteen Service of the Veterans Administration for resale to veterans of the United States armed services who are hospitalized or domiciled in hospitals or homes of the Veterans Administration or~~; (2)~~ (ii) such cigarettes are sold and delivered to ships ~~for consumption thereon,~~ regularly engaged in foreign commerce or interstate coastwise shipping for consumption on the ships.

C. Records needed for cigarettes sold and shipped or delivered in interstate commerce to a person outside Virginia. A ~~qualified wholesale dealer,~~ stamping agent who sells unstamped cigarettes ~~which~~ that are delivered in interstate commerce~~,~~ must keep~~: (1)~~ (i) adequate records ~~which~~ that record the sale~~; (2),~~ (ii) a copy of the invoice for such purchase or other substantiating evidence, and ~~(3)~~ (iii) the receipt from the common carrier, contract carrier, or post office showing shipment for delivery in another state. If delivered by the ~~wholesale dealer~~ stamping agent to the purchaser at a point outside of Virginia, the ~~wholesaler~~ stamping agent must maintain in addition to other records

required ~~herein~~ by this chapter, a receipt ~~which~~ that shows such delivery. ~~D. Records needed for sales of cigarettes properly stamped with revenue stamps of another state.~~ A ~~qualified wholesale dealer,~~ stamping agent who sells cigarettes stamped with revenue stamps of another state must keep records of each sale, the original purchase order, a copy of the invoice for such purchase, and a receipt from the purchaser showing that the purchase was made exclusively for resale in another state. In addition, records must be maintained ~~which~~ that show the purchase and use of the other state's revenue stamps that the wholesale dealer used.

~~1.~~ Exception. The ~~wholesale dealer~~ stamping agent who stamps cigarettes with out-of-state revenue stamps and has a place of business located partly within a city in Virginia and partly without Virginia, or in a county which adjoins such city, shall not be required to obtain a receipt from a purchaser from the other state if the cigarette tax in the other state is higher than the tax imposed in Virginia.

~~E.~~ D. Cigarettes sold to the United States or instrumentality of the United States for resale to or use or consumption. ~~Qualified wholesale dealers~~ Stamping agents may sell unstamped cigarettes to the United States or to any U.S. instrumentalities for resale to or for the use or consumption by members of the armed services of the United States. The ~~qualified wholesale dealer~~ stamping agent may also sell unstamped cigarettes to the Veterans Canteen Service of the Veterans Administration for resale to veterans of the armed services of the United States who are hospitalized or domiciled in hospitals or homes of the Veterans Administration.

~~Qualified wholesale dealers~~ Stamping agents must keep books and records regarding such sales to the United States, U.S. instrumentalities, or Veterans Canteen Service and maintain files of the original purchase orders or copies of invoices showing such sales.

Example 1: ~~Qualified wholesale dealer~~ Stamping agent A sells cigarettes to commissaries or officers' clubs operated by the U.S. Army as instrumentalities of the United States. Unstamped cigarettes may be sold to the commissaries or officers' clubs operated as instrumentalities of the United States.

Example 2: ~~Qualified wholesale dealer~~ Stamping agent B sells cigarettes to federal reformatories for resale. The cigarettes must be stamped by the ~~wholesaler~~ stamping agent prior to sale. Cigarettes may be sold to the United States or its instrumentalities without tax stamps affixed only if such cigarettes are sold for use or consumption to members of the armed forces or veterans of the armed forces hospitalized or domiciled in hospitals or homes of the Veterans Administration.

Example 3: ~~Qualified wholesale dealer~~ Stamping agent C sells cigarettes to the Post Enlisted Men's Club, which is not organized or operated as an instrumentality of the United States. The cigarettes must be stamped by the ~~wholesaler~~ stamping agent prior to sale since the Enlisted Men's Club is not considered an instrumentality of the United States, and such sale of cigarettes is not considered a sale made to the United States.

~~F.~~ E. Cigarettes sold and delivered to ships~~, for consumption thereon,~~ regularly engaged in foreign commerce or interstate coastwise shipping for consumption on the ships. A ~~qualified wholesale dealer~~ stamping agent may sell unstamped cigarettes for delivery to ships regularly engaged in foreign commerce or coastwise shipping between points in Virginia and points outside Virginia. The unstamped cigarettes must be delivered by the ~~wholesale dealer~~ stamping agent to the ship. The unstamped cigarettes must be for resale, use, or consumption upon such ship or in foreign commerce.

~~G.~~ F. Conditions surrounding sale of unstamped cigarettes subjecting ~~wholesale dealer~~ stamping agent to tax. If any wholesale dealer fails to comply with any of ~~the~~ these provisions ~~of 23VAC10-370-110,~~ with respect to any sale of unstamped cigarettes, such ~~wholesale dealer~~ stamping agent shall pay the tax imposed upon such cigarettes.

~~H. Penalty for violation of sale of unstamped cigarettes. Any person who violates any of the provisions on the sale of unstamped cigarettes shall be, upon conviction, guilty of a Class 2 misdemeanor.~~

23VAC10-370-120. ~~Qualification for dealer's permit.~~ (Repealed.)

~~A. Generally. Any wholesaler, who desires to qualify and receive a permit to purchase and affix Virginia tobacco revenue stamps to cigarettes, must make application to the Department of Taxation. Such application must be made on the forms provided by the Department.~~

~~B. Issuance of stamping permit. After reviewing the wholesaler's application, the Department shall issue to the wholesaler it finds to be qualified, a permit which qualifies him to purchase and affix Virginia tobacco revenue stamps to cigarettes.~~

~~C. Privileges of qualified wholesale dealer. Any duly qualified wholesale dealer, who has received his permit to purchase and affix Virginia tobacco revenue stamps, shall be allowed a discount on purchases of the Virginia tobacco revenue stamps for his individual use as regulated in 23VAC10-370-100 C.~~

~~The Department of Taxation shall not sell stamps subject to discount to any wholesaler until he has received from the Department a permit to purchase and affix Virginia revenue stamps.~~

~~D. Revocation of stamping permit. The Department may revoke the wholesaler's permit if the wholesaler is found guilty of violating any provisions of the cigarette tax statutes~~

~~or any adopted and promulgated rules of the Department pertaining to the cigarette tax.~~

~~Example 1: Wholesaler A has a place of business in Virginia and purchases unstamped cigarettes directly from the manufacturer. For purposes of the Virginia cigarette tax the wholesaler qualifies for a permit to buy at discount and stamp cigarettes with Virginia revenue stamps.~~

~~Example 2: Wholesaler B is an out of state business with no business locations in Virginia. Wholesaler B sells cigarettes to Virginia retailers. Wholesaler B qualifies for a permit to buy at discount and stamp the cigarettes subject to the Virginia cigarette excise tax.~~

~~Example 3: Chain store C distribution center with locations within and without Virginia, purchases cigarettes directly from manufacturers. Each distribution center within Virginia and without Virginia may qualify for a permit to buy at discount and stamp cigarettes subject to the Virginia cigarette excise tax.~~

~~Example 4: Wholesaler D, a qualified wholesale dealer for Virginia revenue stamp purposes, receives a request from Retailer E to stamp cigarettes owned by the retailer. The sale of Virginia revenue stamps by anyone other than the Department of Taxation is prohibited.~~

~~Example 5: Wholesaler F and Wholesaler G are engaged in a joint stamping operation. Each wholesaler must have been issued the permit required for stamping and each wholesaler must separately maintain all of his own records. Each wholesaler must separately purchase Virginia revenue stamps. If metering devices are used, each must have a separate meter with separately assigned meter number and each must stamp his own cigarettes.~~

23VAC10-370-180. ~~Sale, purchase, possession, etc., of cigarettes for purposes of evading tax; penalty.~~ (Repealed.)

~~A. Generally. Except as otherwise provided by law, it is unlawful for any person to sell, purchase, transport, receive or possess unstamped cigarettes.~~

~~1. Certain persons, as regulated in 23VAC10-370-110, may sell unstamped cigarettes; however, no person shall lawfully sell cigarettes without stamps for purposes of evading cigarette tax.~~

~~2. Any person who is not a regularly licensed dealer, as regulated in 23VAC10-370-120, having more than thirty packages of unstamped cigarettes in his possession in this State, is presumed to be evading the cigarette tax due on such cigarettes.~~

~~B. Penalty. Any person selling unstamped cigarettes for the purpose of evading the cigarette tax shall be, upon conviction, guilty of a Class 3 misdemeanor.~~

VA.R. Doc. No. R19-5506; Filed November 27, 2018, 3:59 p.m.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department for Aging and Rehabilitative Services is conducting a periodic review and small business impact review of **22VAC30-60, Grants to Area Agencies on Aging**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare 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 December 24, 2018, and ends January 14, 2019.

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 Charlotte Arbogast, Senior Policy Advisor, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, FAX (804) 662-7663, or email charlotte.arbogast@dars.virginia.gov.

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.

STATE AIR POLLUTION CONTROL BOARD

Opportunity for Public Comment on the State Implementation Plan Revision - § 110(a)(2) with Respect to the 2015 Ozone NAAQS

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to assure necessary authorities are contained in the state implementation plan (SIP) for the 2015 Ozone National Ambient Air Quality Standard (NAAQS) supporting the infrastructure requirements of the federal Clean Air Act. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia SIP in accordance with the requirements of § 110(a) of the Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA).

Purpose of notice: DEQ is seeking comment on the issue of whether the plan demonstrates the Commonwealth's compliance with federal Clean Air Act requirements related to general state plan infrastructure for controlling the interstate transport of air pollution for the 2015 Ozone NAAQS.

Public comment period: December 24, 2018, through January 23, 2018.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name and address of the person requesting the hearing and be received by DEQ on the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Description of proposal: The proposed revision consists of a demonstration that Virginia meets the obligations of § 110(a)(2) with respect to the 2015 Ozone NAAQS.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the SIP.

How to comment: DEQ 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 DEQ on the last day of the comment period. All information received is part of the public record.

To review the proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website at http://www.deq.virginia.gov/Programs/Air/PublicNotices/airplansandprograms.aspx.

The documents may also be obtained by contacting the listed DEQ representative. 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) DEQ Main Street Office, 1111 East Main Street, Suite 1400, Richmond, VA, telephone (804) 698-4070; 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact Information: Doris A. McLeod, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4319, or email doris.mcleod@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 **9VAC5-540, Emergency Generator General Permit**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated November 19, 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. There was one comment received that requested a change to the regulation, but none were received that were consistent with the purpose of the regulation, which is to permit the use of emergency generators in emergencies. 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 and relevant public comments, 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.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Audiology and Speech-Language Pathology conducted a small business impact review of **18VAC30-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Audiology and Speech-Language Pathology is publishing its report of findings dated November 30, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board received no complaints or recommendations for change to public participation guidelines. There is no impact on small businesses.

Contact Information: Elaine Yeatts, Agency Regulatory Coordinator, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Richmond VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

BOARD OF COUNSELING

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Counseling conducted a small business impact review of **18VAC115-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Counseling is publishing its report of findings dated November 30, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board received no complaints or recommendations for change to public participation guidelines. There is no impact on small businesses.

Contact Information: Elaine Yeatts, Agency Regulatory Coordinator, Board of Counseling, 9960 Mayland Drive, Richmond VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 26, 2018

COMMONWEALTH OF VIRGINIA, ex rel.

CASE NO. PUR-2018-00059

STATE CORPORATION COMMISSION

Ex Parte: In the matter
concerning the implementation by
Appalachian Power Company d/b/a
American Electric Power-Virginia
of a pilot program for the deployment of
electric power storage batteries pursuant to

Enactment Clause Nos. 9 and 10 of
Senate Bill 966

and

COMMONWEALTH OF VIRGINIA, ex rel.

CASE NO. PUR-2018-00060

STATE CORPORATION COMMISSION
Ex Parte: In the matter
concerning the implementation by
Virginia Electric and Power
Company d/b/a Dominion Energy Virginia
of a pilot program for the deployment of
electric power storage batteries pursuant to
Enactment Clause Nos. 9 and 10 of
Senate Bill 966

ORDER ESTABLISHING GUIDELINES

Pursuant to provisions within Chapter 296 of the 2018 Acts of Assembly ("Act"),[1] the State Corporation Commission ("Commission") docketed these proceedings to implement electric power storage pilot programs for Appalachian Power Company ("APCo") and Dominion Energy Virginia ("DEV"). The Act directs the Commission to adopt such rules or establish such guidelines by December 1, 2018, as may be necessary for the general administration of the pilot programs.

On April 20, 2018, the Commission issued its Order Directing Comments ("Order Directing Comments") herein for the purpose of receiving comments from APCo, DEV and any other interested party regarding the implementation of these pilot programs. The Order Directing Comments further required DEV and APCo to submit comments (and permitted interested parties to submit comments) concerning any rules or guidelines such utilities or interested parties believed necessary for the general administration of these programs.

On June 19, 2018, DEV and APCo jointly filed comments in these dockets suggesting that the Commission adopt guidelines for the administration of these pilot programs (in lieu of a formal rulemaking). The utilities attached to their joint comments, a set of draft guidelines proposed as the basis for Commission guidelines concerning these programs.[2] Comments were also received from Cliona Mary Robb, in her capacity as Chair of the Virginia Solar Energy Development and Energy Storage Authority. No additional comments were received in response to the Order Directing Comments.

The Commission Staff's ("Staff") Action Brief filed in these dockets thereafter stated that the guidelines jointly proposed by DEV and APCo were generally compliant with the requirements outlined in Enactment Clauses 9 and 10 of the Act. The Staff suggested revisions to the draft and further recommended that the Commission issue an Order providing notice of these draft guidelines, as revised by the Staff, allowing DEV and APCo, and other interested parties to submit comments thereon.

On August 28, 2018, the Commission issued its Order for Comments on Draft Guidelines ("August 28, 2018 Order") soliciting comments on the revised draft guidelines. Comments were to be filed on or before October 1, 2018.[3] Thereafter, on September 28, 2018, the Commission issued its Order Extending Comment Period herein, extending the deadline for submitting comments on the draft guidelines to October 19, 2018.

Comments concerning the revised draft guidelines were jointly submitted by APCo and DEV on October 19, 2018 ("Joint Comments"). The Joint Comments principally propose that the Commission incorporate in these guidelines certain provisions previously proposed by APCo and DEV in their joint submission on June 19, 2018 (but not incorporated in the revised draft guidelines attached to the Commission's August 28, 2018 Order). These provisions relate to the "repurposing" of battery energy storage systems during a pilot program subject to these guidelines.[4] The Joint Comments also propose that utility annual reporting requirements in the guidelines be modified to address circumstances in which information for an annual report is not available or applicable.[5] No additional comments were received concerning the revised draft guidelines made available for comment by the August 28, 2018 Order.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds as follows: The Act states that the Commission shall adopt rules or establish such guidelines by December 1, 2018, as may be necessary for the general administration of the pilot programs to deploy electric power storage batteries. We have considered all comments and submissions in these dockets, and find it reasonable to establish the Guidelines Regarding Electric Power Storage Battery Pilot Programs attached to this Order. We have substantially incorporated therein the modifications proposed by DEV and APCo in their Joint Comments, together with other clarifying changes. The guidelines attached to this Order show the additions and deletions associated with such modifications.

Accordingly, IT IS ORDERED THAT:

(1) The Guidelines Regarding Electric Power Storage Battery Pilot Programs as set forth in the Attachment to this Order are hereby established pursuant to the Act; and

(2) There being nothing further to come before the Commission in this proceeding, the case is hereby dismissed.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to: Joseph K. Reid, III, Esquire, McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, 14th Floor, Richmond, Virginia 23219; Mark O. Webb, General Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219; Noelle J. Coates, Senior Counsel, American Electric Power Service Corporation, 3 James Center, 1051 East Cary Street, Suite

1100, Richmond, Virginia 23219; James R. Bacha, Esquire, American Electric Power Service Corporation, 1 Riverside Plaza, 29th Floor, Columbus, Ohio 43215; Cliona Mary Robb, Esquire, 3006 Seminary Avenue, Richmond, Virginia 23227; and C. Meade Browder, Jr., Senior Assistant Attorney General, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424. Copies shall be delivered to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

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[1]The Act, signed into law by the Governor of Virginia on March 9, 2018, became effective July 1, 2018. At the direction of the Virginia Code Commission, Enactment Clauses 9 and 10 of the Act establishing this pilot program were codified as § 56-585.1:6 of the Code of Virginia.

[2]The draft guidelines, inter alia, defined the scope of "battery energy storage systems" ("BESS"); outlined information to be furnished to the Commission regarding each proposal to deploy such storage systems in conjunction with these pilot programs; and contained utility reporting requirements including (i) written notice by these electric utilities to the Commission prior to placing a BESS into service as part of a pilot program, and (ii) annual reports by these electric utilities to the Commission concerning the status of each pilot program.

[3]The Commission also directed the Commission's Division of Public Utility Regulation to provide copies of this Order and the draft guidelines by electronic transmission, or when electronic transmission was not possible, by mail, to individuals, organizations, and companies identified by Staff as potentially having an interest in these proceedings.

[4]APCo and DEV propose that the guidelines permit a utility to utilize a BESS for some period other than the expected five-year period established under the draft guidelines if the BESS is "repurposed" by the utility. Related language establishing procedures by which a utility would notify the Commission that a BESS is to be repurposed is also proposed in the Joint Comment. The Joint Comments further propose that "repurpose" be defined in the guidelines, and that this term be defined to mean "chang[ing] the application(s) or location of the BESS from what was in the initial project." The Staff's Action Brief had identified the absence of such a definition in the June 19, 2018 joint submission of APCo and DEV as one basis for not recommending the inclusion of "repurposing" provisions in the guidelines; Staff had also questioned the necessity of these provisions. The Joint Comments, however, noted that unforeseen events or changes in technology could result in the utilization of an installed BESS in a different or more economical way than originally approved. To allow for flexibility and to account for these possibilities, the Joint Comments advocated the inclusion of these provisions in the Commission's guidelines. The Commission is advised by the Staff that it has no objection to the inclusion of the "repurposing" language proposed in the Joint Comments.

[5]Language proposed in the Joint Comments would permit a utility to note and explain any information requested in the guidelines that is not available or applicable at the time of each annual report. The Commission is advised by the Staff that it does not object to this proposed modification.

Guidelines Regarding Electric Power Storage Battery Pilot Programs

A. Purpose

The Commission is establishing these guidelines pursuant to Enactment Clause Nos. 9 and 10 of the Grid Transformation and Security Act of 2018, Chapter 296 of the 2018 Virginia Acts of Assembly, regarding pilot programs for electric power storage batteries (the "Pilot Programs").[1] Specifically, Enactment Clause No. 10 provides that the Commission shall establish such general guidelines as may be necessary for its administration of the Pilot Programs by December 1, 2018.

B. Applicability

These guidelines ("Guidelines") are applicable to each Phase I Utility and Phase II Utility, as such terms are defined in subdivision A 1 of § 56-585.1 of the Code of Virginia. In other words, these guidelines are applicable to Appalachian Power Company, the Phase I Utility, and Virginia Electric and Power Company, currently doing business as Dominion Energy Virginia, the Phase II Utility.

C. Definition

"Battery energy storage systems" ("BESS"). A system that includes the battery (or batteries) and all the equipment necessary to interconnect the battery (or batteries) to the utility's electric system. This includes but is not limited to switchgear, transformers, inverters, switches, cables, wires, conductors, bus work, protection devices and systems, control devices and systems, fire protection systems, and environmental protection systems.

"Repurpose." To change the application(s) or the location of a BESS from that stated in an initial project filing.

D. Filing

Each utility may file with the Commission one or more applications to participate in the Pilot Program at different times, up to the maximum allowable capacity cap of 10 megawatts ("MW") for the Phase I Utility and 30 MW for the Phase II Utility. The utility will note and explain the omission of any information requested in these Guidelines that is not available or applicable at the time of each filing.

Any information considered to be confidential may be designated as such, filed separately, and include a request that it be treated in accordance with the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10, et seq.

E. Contents of Filing

Each proposal to deploy a BESS submitted as part of the Pilot Program shall include the following information:

• Location. The utility shall provide the location where the utility proposes to install the BESS. If the utility proposes to install a BESS at a customer premise, the utility shall provide the name and address of the customer, a description of the arrangement with the customer allowing collocation on the customer's property, and a description of the proposed ownership of the BESS.

• Capacity. The utility shall provide the capacity of the proposed BESS and the aggregate capacity of all proposals approved by the Commission under the Pilot Program for the utility.

• Technology. The utility shall specify the proposed BESS technology and the manner in which the BESS will be or has been procured.

• In-Service Date. The utility shall provide the expected date on which the proposed BESS will be placed into service. The in-service date shall serve as the start date for the BESS as part of the Pilot Program. The proposed BESS will be in service for five years unless the utility has provided notice to repurpose or retire the BESS. Each proposal shall include an explanation by the utility for any proposed use of the BESS beyond the five-year duration of the Pilot Program.

• Useful Life and Decommissioning. The utility shall provide the projected useful life of the proposed BESS, including known or projected performance degradation and proposed plan for decommissioning at the end of its useful life.

• Cost. The utility shall provide the projected installation cost of the proposed BESS and a detailed analysis of the projected operation and maintenance ("O&M") cost associated with the proposed BESS. This shall include an appropriate cost metric for evaluation based on the proposed objective(s) of the BESS.

• Asset Classification. The utility shall indicate its preferred classification of the proposed BESS as a generation, transmission, or distribution asset.

• Objective. The utility shall specify the objective(s) that the specific proposal will seek to accomplish, including a description of how the specific proposal will accomplish the stated objective(s). Permissible objectives, as listed in Enactment Clause No. 9, include: (i) improved reliability of electrical transmission or distribution systems; (ii) improved integration of different types of renewable resources; (iii) deferred investment in generation, transmission, or distribution of electricity; (iv) reduced need for additional generation of electricity during times of peak demand; or (v) connection to the facilities of a customer receiving generation, transmission, and distribution service from the utility.

• Metrics and Performance Data. The utility shall provide the initial metrics that will be used to determine if the proposed BESS is meeting the objective(s) that the proposal seeks to accomplish. Initial metrics may include performance and operational safety metrics.

F. Repurposing

If a utility seeks to repurpose a BESS that the Commission has approved for inclusion in the Pilot Program and that the utility has deployed as part of the Pilot Program, the utility shall provide notice to the Commission at least thirty (30) days before repurposing the BESS. The notice shall include all of the information required by Section E of these Guidelines, as well as the reason why the utility seeks to repurpose the BESS.

A repurposed BESS will continue to count toward the allowable capacity cap as originally approved.

G. Reporting

The utility shall provide written notice to the Commission within fifteen (15) business days of placing a BESS into service as part of the Pilot Program. The written notice shall include the actual capacity of the BESS placed into service and the capacity remaining available to the utility for future proposals under the Pilot Program.

Each utility shall submit to the Commission an annual consolidated report on the status of the Pilot Program by March 31 of the following year. The report shall include the aggregate capacity of Commission-approved proposals under the Pilot Program. For each approved proposal, the report shall include (i) an update on the progress of the specific proposal in meeting its objective(s), using metrics identified in the initial filing for the proposal as approved by the Commission; (ii) an update on installation cost, as well as actual and projected O&M costs; and (iii) performance data and metrics over time, including any additional metrics developed during the course of the deployment. The report shall also discuss (i) transmission and distribution system benefits; (ii) line-loss savings; (iii) enhanced electric generation capacity; (iv) fuel cost savings; (v) ancillary services benefits; and (vi) any readily quantifiable economic development and job creation benefits across the Commonwealth. The utility will note and explain the omission of any information requested in these Guidelines that is not available or applicable at the time of each annual report.

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[1]Enactment Clause Nos. 9 and 10 of Chapter 296 of the 2018 Virginia Acts of Assembly were codified as § 56-585.1:6 of the Code of Virginia at the direction of the Virginia Code Commission.

AT RICHMOND, NOVEMBER 26, 2018

COMMONWEALTH OF VIRGINIA, ex rel.

CASE NO. PUR-2018-00061

STATE CORPORATION COMMISSION

Ex Parte: In the matter
concerning the implementation by
Virginia Electric and Power
Company d/b/a Dominion Energy Virginia
of a pilot aggregation program pursuant
to House Bill 1451

ORDER ESTABLISHING GUIDELINES

Pursuant to the Chapter 415 of the 2018 Acts of Assembly ("Act"),[1] on April 20, 2018, the State Corporation Commission ("Commission") issued its Order Directing

Comments ("Order Directing Comments") herein for the purpose of receiving comments from Dominion Energy Virginia ("DEV" or "Company") and any other interested party regarding a pilot program established pursuant to the Act.[2]

Thereafter, on June 19, 2018, DEV submitted comments and draft guidelines in response to the Order Directing Comments. The draft guidelines addressed, inter alia, the applicability of the Commission's net metering rules to this pilot, various charges that participating schools will continue to pay, as well as metering requirements, the treatment of renewable energy certificates, and liability insurance requirements. Comments in this docket were also filed on June 19, 2018, by WGL Energy Systems, Inc. ("WGL Energy").[3] No other comments were received.

The Commission Staff's ("Staff") Action Brief filed in this docket on August 28, 2018, stated that the Staff was in general agreement with the draft guidelines submitted by DEV as well as further revisions made by the Company addressing questions raised by the Staff. The Staff then recommended that the Commission issue an order providing notice of the draft guidelines as revised ("Draft Guidelines") and allow an opportunity for interested parties to submit comments thereon.

On August 28, 2018, the Commission issued an Order for Comments on Draft Guidelines.[4] Comments on the Draft Guidelines were to be filed in this docket on or before October 1, 2018. Thereafter, on September 28, 2018, the Commission issued an Order Extending Comment Period in this docket, extending the comment submission deadline from October 1, 2018, to October 19, 2018.

Joint comments and proposed modifications to the Draft Guidelines ("Joint Comments") were filed by DEV and Arlington Public Schools ("APS") on October 19, 2018. The Joint Comments, inter alia, sought to clarify the costs included in the VEPGA_RATE used in the guidelines' formula for crediting excess electricity generation to schools participating in the pilot program. Specifically, APS and DEV propose that the formula include the full cost of generation, including certain generation-related rate adjustment clauses, in calculating the VEPGA_RATE while excluding certain distribution- and transmission-related riders in that rate's calculation. No other comments concerning the Draft Guidelines were filed in this proceeding.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds as follows. The Act states that by December 1, 2018, the Commission shall adopt rules or establish guidelines "as may be necessary for the general administration of the pilot program."

We have considered all comments and submissions in this docket, and find it reasonable to establish the guidelines attached to this Order. In particular, we have incorporated therein the modifications proposed by DEV and Arlington Public Schools in their Joint Comments concerning the formula for crediting excess electricity generation to schools participating in the pilot program. The guidelines attached to this Order show the additions and deletions associated with such modifications.

Accordingly, IT IS ORDERED THAT:

(1) The guidelines as set forth in the Attachment to this Order are hereby established pursuant to the Act; and

(2) There being nothing further to come before the Commission in this proceeding, this case is hereby dismissed.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to: Joseph K. Reid, III, Esquire, McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, 14th Floor, Richmond, Virginia 23219; Mark O. Webb, General Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219; Noelle J. Coates, Senior Counsel, American Electric Power Service Corporation, 3 James Center, 1051 East Cary Street, Suite 1100, Richmond, Virginia 23219; James R. Bacha, Esquire, American Electric Power Service Corporation, 1 Riverside Plaza, 29th Floor, Columbus, Ohio 43215; Telemac N. Chryssikos, Esquire, WGL Energy Systems, Inc., 101 Constitution Avenue, N.W., Washington, D.C. 20080; and C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424. A copy shall be delivered to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

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[1]The Act, introduced as House Bill 1451 and signed into law by the Governor of Virginia on March 23, 2018, became effective July 1, 2018. At the direction of the Virginia Code Commission, the Act was codified as § 56-585.1:7 of the Code of Virginia.

[2]The Act directs DEV to submit a proposal to the Commission to establish a pilot program that would allow "any school in a public school division . . . that generates electricity from a wind-powered or solar powered renewable energy facility located at the school" certain enumerated options with regard to any amounts of generated electricity that exceed the school's consumption. The Act also directed the Commission, by December 1, 2018, to adopt rules or establish guidelines "as may be necessary for the general administration of the pilot program . . . ."

[3]WGL Energy offered comments in support of the pilot and advocated that the pilot program operate in the form of a feed-in tariff that would enable third party suppliers to participate in the development and operation of solar facilities utilized in the pilot program.

[4]In the Order for Comments on Draft Guidelines, the Commission also directed its Division of Public Utility Regulation to provide copies of that Order and the Draft Guidelines by electronic transmission, or when electronic transmission is not possible, by mail, to individuals, organizations, and companies identified by Staff as potentially having an interest in this proceeding.

GUIDELINES FOR PUBLIC SCHOOL EXCESS WIND OR SOLAR RENEWABLE GENERATION PILOT PROGRAM

I. Introduction

The defined terms in these Pilot Program guidelines shall have the meanings provided in Paragraph III, below.

These guidelines are established pursuant to House Bill 1451, enacted as Chapter 415 of the 2018 Acts of Assembly,[1] They will govern the Company's Pilot Program not to exceed an aggregate of ten megawatts ("10 MW") of installed capacity, for the treatment of any Host School's excess wind or solar renewable fuel generation, as envisioned by House Bill 1451 and as described below.

The Pilot Program will allow any Host School in a public school division in the Company's Virginia service territory that generates electricity from a wind-powered or solar-powered renewable fuel generator, which is located on such Host School's premises, in an amount that exceeds the electricity consumed by such Host School to have the Company either (i) credit one or more Metered Account(s) of Target School(s) or (ii) provide a payment for such Excess Generation to the Host School.

The School Board overseeing the Host School shall have the option to direct the Company to provide compensation for the Host School's Excess Generation on an annual basis, in a manner to be determined by the School Board, as follows:

A. As the first option, the School Board could direct the Company to apportion the Host School's Excess Generation to the Metered Account(s) of Target School(s) in the same public school division, such that the generation energy charges on the electric bills of such Metered Accounts of the Target Schools would be reduced by the amount of the Excess Generation kWh apportioned to the Metered Accounts multiplied by the applicable VEPGA generation energy rate of the Target Schools;

B. Alternatively, the School Board could direct the Company to pay the Host School for its Excess Generation through a power purchase agreement at a rate pursuant to the Amended and Restated Agreement for the Provision of Electric Service to Municipalities and Counties of the Commonwealth of Virginia From Virginia Electric and Power Company entered into by the Company and VEPGA on August 1, 2014, as amended.

II. Term

The Term of the Pilot Program shall be for six (6) years. Such term shall begin on the Commencement Date and end on the 6th anniversary of the Commencement Date, which shall be the Termination Date.

III. Terms and Definitions

The terms below shall have the following definitions for the purposes of these Pilot Program guidelines:

A. "Act" – House Bill 1451 or Chapter 415 of the 2018 Acts of Assembly.

B. "Agreement" – the Amended and Restated Agreement for the Provision of Electric Service to Municipalities and Counties of the Commonwealth of Virginia From Virginia Electric and Power Company entered into by the Company and VEPGA on August 1, 2014, as amended, and any superseding agreement reached between the Company and VEPGA for Electric Service to become effective subsequent to the August 1, 2014 agreement.

C. "Commencement Date" – the commencement date for the Pilot Program, which shall be the first of the month that (i) is no less than fifteen (15) calendar days after entry of a Commission order adopting guidelines, rules, or regulations governing the Pilot Program and (ii) no more than sixty (60) calendar days after the date of such order of the Commission.

D. "Commission" – the State Corporation Commission of Virginia.

E. "Company" – Virginia Electric and Power Company, d/b/a Dominion Energy Virginia.

F. "Customer" – Any person, group of persons, association, partnership, firm or corporation purchasing Electric Service from the Company.

G. "Delivery Point" – the point where the Company's conductors for delivering Electric Service are connected to the Customer's conductors for receiving Electric Service.

H. "Distribution Service" – The delivery of electricity through the distribution facilities of the Company to the Delivery Point of a Customer.

I. "Electric Delivery Service" – Distribution Service, and the delivery of electricity under this tariff to Customers served at transmission level voltage, and related utility services, to the extent each is provided under this tariff by the Company.

J. "Electric Service" – The provision, by the Company to the Customer, of Electric Delivery Service and, to the extent provided by the Company, Electricity Supply Service and utility services. Electric Service also means, where applicable, the interconnection of electric generators with the Company.

K. "Electricity Supply Service" – The generation of electricity, or when provided together, the generation of electricity and its transmission to the distribution facilities of the Company on behalf of a Customer.

L. "Excess Generation" – the amount of electricity generated by the Host School's Renewable Generation Facility during the Host School's Net Metering Period that is in excess of the number of kilowatt-hours consumed by the Host School during the same Net Metering Period.

M. "Host School" – a public elementary, middle, or high school that (i) is a Customer of the Company, (ii) is billed under an applicable VEPGA Rate Schedule, (iii) is situated in the Company's Virginia service territory, and (iv) has a Renewable Generation Facility, located on its premises, and generates more electricity than the Host School consumes in any Net Metering Period.

N. "Metered Account" – the Company-assigned account number, (and any superseding account number(s) that the Company may assign for this same account) for a Delivery Point metered by the Company for a Target School, which was identified by the School Board to receive a portion of the Host School's Excess Generation.

O. "Person" – means any individual, sole proprietorship, corporation, limited liability company, partnership, association, company, business, trust, joint venture, or other private legal entity, the Commonwealth, or any city, town, authority or other political subdivision of the Commonwealth.

P. "Pilot Program" – the pilot program conducted by the Company pursuant to the Act.

Q. "Rate Schedule" – any of the Company's rate schedules that are included in Attachment B of the Agreement.

R. "REC" or "RECs" – one or more renewable energy certificates owned by the Host School and created by the renewable energy output of the Host School's Renewable Generation Facility.

S. "Renewable Fuel Generator" – one or more electrical generators that meet the following criteria:

1. Wind or solar power is the exclusive renewable fuel source;

2. The Host School owns and operates or has contracted with other Persons to own or operate, or both, the electrical generator(s), pursuant to the 20 VAC 5-315 Rules;

3. The electrical generator(s) is located on the Host School's premises and is connected to the Host School's wiring on the Host School's side of the interconnection with the Company;

4. The electrical generator(s) operates in parallel with the Company's distribution facilities.

T. "Renewable Generation Facility" – one or more Renewable Fuel Generators that has an aggregate installed capacity not to exceed the limitations of the 20 VAC 5-315 Rules.

U. "School Board" – the local recognized elected or appointed board or group that is responsible for public education in the same public school division in which the Host School and Target School(s) are located.

V. "Target School" – a public elementary, middle, or high school (including any public school technical center located in and only available to the public school students of the same public school division in which the Host School is located) that (i) is a Customer of the Company, (ii) is billed under an applicable VEPGA Rate Schedule, (iii) is located in the same public school division as the Host School, and (iv) has one or more Metered Accounts identified by the School Board to receive a bill credit amount based on an apportionment of the Host School's Excess Generation.

W. "Term" – the six (6)-year period during which the Pilot Program is effective, beginning with the Commencement Date and ending on the Termination Date.

X. "Termination Date" – the termination date of the Pilot Program, which will be the sixth anniversary of the Commencement Date.

Y. "VEPGA" – the Virginia Energy Purchasing Governmental Association.

Z. "20 VAC 5-315 Rules" – the Commission's Regulations Governing Net Energy Metering, 20 VAC 5-315-10, et seq.

IV. Applicability and Availability

A. Pursuant to the Act and the 20 VAC 5-315 Rules[2] and pursuant to Attachment A of the Agreement, the Company's Pilot Program is applicable to any Host School which meets the following criteria:

1. The Host School must be a Net Metering Customer as defined in the 20 VAC 5-315 Rules;

2. The Host School's Renewable Generation Facility is accepted by the Company into the Pilot Program, along with any Metered Account(s) of one or more Target Schools, which have been identified by the School Board to receive an apportionment of the Excess Generation, as described in Paragraph VI, below;

3. The following provisions of the 20 VAC 5-315 Rules are not applicable to the Host School or to any Target School:

a. Agricultural Net Metering;

b. Small Agricultural Generators provisions;

c. The standby charge for residential Net Metering Customers; and

d. Option for the Host School to sign a power purchase agreement with the Company under the 20 VAC 5-315 Rules if the School Board directs the Company to apportion the Host School's Excess Generation to Metered Account(s) of Target School(s) in accordance with Paragraph I.A., above.

4. The Host School and the School Board-designated Metered Accounts of each Target School accepted into the Company's Pilot Program must purchase Electricity Supply Service from the Company during the Term of the Pilot Program.

5. Once the aggregate 10 MW alternating current installed capacity limit is reached, this Pilot Program shall be closed and no longer available to other host schools.

B. Once a Host School is accepted into the Pilot Program, in accordance with Paragraph IV.A., above, the provisions of the applicable of Paragraph I.A., or Paragraph I.B., above – but not both – will be available at the conclusion of the Host School's Net Metering Period that is in progress as of the Commencement Date of the Pilot Program.

C. The Pilot Program shall end on the Termination Date. As such, the provisions of the applicable of Paragraph I.A., or Paragraph I.B., above – but not both – shall no longer be available for the Host School's excess generation determined by the Company, in accordance with Paragraph V., below, for the Net Metering Period that is in progress as of the Termination Date of the Pilot Program. After the Termination Date, the VAC 5-315 Rules shall apply to the Host School's excess generation.

V. Excess Generation

A. The Company will determine the Host School's Excess Generation pursuant to these Pilot Program guidelines.

B. The Company will calculate the Host School's Excess Generation for the most recently completed Net Metering Period during the Term of the Pilot Program. Unless the School Board directs the Company to provide compensation for the Host School's Excess Generation in accordance with either Paragraph I.A. or Paragraph I.B., above – but not both – the Company will follow the 20 VAC 5-315 Rules regarding the Host School's Excess Generation.

C. Within sixty (60) days of the effective date of the Pilot Program to the Host School, the School Board will provide the Company with the following information:

1. A list of the Metered Account(s) for one or more Target School(s) to which the Host School's Excess Generation will be apportioned;

2. The percentage of the Host School's Excess Generation to be apportioned to each Metered Account, where the sum of the percentages provided by the School Board for the Metered Accounts cannot exceed 100 percent or the total amount of the Host School's Excess Generation.

VI. Billing and Payment

A. Within sixty (60) days after the end of the Host School's most recently completed Net Metering Period and continuing annually, thereafter, for each successive Host School Net Metering Period during the Term of the Pilot Program until the Termination Date, the Company will do the following:

1. If the School Board directs the Company to apportion the Host School's Excess Generation to one or more Metered Accounts, the Company will calculate and apply a bill credit dollar amount to each Metered Account, which will receive a School-Board-designated portion of the Host School's Excess Generation, using the following formula:

TSMA_BCDA = EG * TSMA% * VEPGA_RATE

Where:

TSMA_BCDA = Target School Metered Account's Bill Credit Dollar Amount which is the amount that the Company will apply to one or more Metered Accounts designated by the School Board;

EG = Excess Generation at the end of Host School's most recently completed Net Metering Period

TSMA% = Specified Target School Metered Account's percentage of the Host School's Excess Generation that is designated by the School Board, for the Metered Account; and

VEPGA_RATE = VEPGA Rate which is the applicable generation-related energy rate under the Electricity Supply Service Charges paragraph of the applicable, selected VEPGA Rate Schedule used to bill the Metered Account, plus all applicable VEPGA kWh-based riders with the exception of any non-fuel-related or non-generation-related VEPGA kWh-based riders (e.g., VEPGA Rider U Phase 1-CM, VEPGA Rider U Phase 2-CM, any other distribution-related kWh-based rider(s) which becomes applicable VEPGA in the future, and VEPGA Rider T). This generation-related VEPGA energy rate will be equal to the average annual generation-related energy rate, plus all applicable VEPGA kWh-based riders with the exception of any non-fuel-related or non-generation-related VEPGA kWh-based riders, for each Metered Account for the consecutive 12-month billing period that most closely matches the Host School's Net Metering Period. Such average annual generation-related VEPGA energy rate per kWh for such 12-month billing period will be determined as the sum of all of the monthly (i) generation-related kWh charges under the Electricity Supply Service Charges paragraph of the applicable, selected VEPGA Rate Schedule used to bill the Target School's Metered Account, plus (ii) the VEPGA fuel charges, plus (iii) the generation kWh-based rider charges, which are calculated for each VEPGA generation kWh-based rider and exclude any non-fuel-related or non-generation-related

VEPGA kWh-based rider charges, where the sum is divided by the Target School's annual kWh consumption for the same 12-month billing period.

There shall be no assessment of any new service charges or fees in connection with or arising out of such crediting during the Term of the Pilot Program.

If the School Board identifies one or more Metered Accounts but does not provide the Company with the corresponding percentage(s) to apportion the Host School's Excess Generation to the Metered Account(s), or otherwise does not follow the Pilot Program guidelines, the Company will provide compensation for the Host School's Excess Generation in accordance with the 20 VAC 3-315 Rules.

2. If, alternatively, the School Board directs the Company to provide a payment to the Host School for the Excess Generation, the Company will compensate the Host School for the Excess Generation in accordance with the VEPGA Agreement.

B. For each billing month, the Host School will pay to the Company the sum of the applicable Distribution Service Charges, Electricity Supply Service Charges, standby charges mutually agreed to by the Company and VEPGA in the Agreement, and all riders applicable to the VEPGA Rate Schedule under which the Host School receives Electric Service from the Company.

C. For each billing month, the Target School will pay to the Company the sum of the applicable Distribution Service Charges, Electricity Supply Service Charges, standby charges mutually agreed to by the Company and VEPGA in the Agreement, and all riders applicable to the VEPGA Rate Schedule under which the Target School receives Electric Service from the Company.

VII. Metering Requirements

A. The Company will require the installation of an interval data recorder ("IDR") meter or an advanced metering infrastructure ("AMI") meter at the Host School's service location to measure (i) the Host School's average 30-minute interval capacity and energy consumption by half-hour during the billing month and (ii) the average 30-minute interval capacity and energy delivered to the Host School by the Host School's Renewable Generation Facility.

If the Host School's applicable selected VEPGA Rate Schedule does not otherwise require interval data metering or if the Host School is not located in the Company's "AMI footprint," the Host School agrees to pay to the Company the Company's incremental cost for the interval data metering equipment, subject to an Excess Facilities Charge mutually agreed to by the Company and VEPGA in the Agreement, during the period that the Host School participates in the Company's Pilot Program.

B. The Company will require the installation of an IDR or an AMI meter to measure the total output by half-hour of the Host School's Renewable Generation Facility for the billing month. The Host School agrees to pay to the Company the Company's incremental cost for the interval data metering equipment, subject to an Excess Facilities Charge mutually agreed to by the Company and VEPGA in the Agreement, during the period that the Host School participates in the Company's Pilot Program.

VIII. Renewable Energy Certificates

A. The Host School owns any RECs associated with the Renewable Generation Facility during the Term of the Pilot Program.

B. During the Term of the Pilot Program and continuing after the Termination Date of the Pilot Program, the Host School agrees to waive any right (i) to sell to the Company or to any other party or (ii) to offer to market all Renewable Generation Facility RECs which are created and accumulated during the Term of the Pilot Program.

IX. Liability insurance

A. A Host School with a Renewable Generation Facility having an alternating current capacity not exceeding 10 kilowatts shall maintain commercial or other insurance providing coverage of at least $1,000,000 for the liability of the insured against loss arising out of the use of a Renewable Generation Facility, and for a Renewable Generation Facility having an alternating current capacity exceeding 10 kilowatts the coverage shall be in the amount of at least $2,000,000. The Host School shall name the Company as an additional insured party under such policy.

B. The Host School is not required to purchase additional liability insurance where the Host School's existing insurance policy provides coverage against loss arising out of the use of a Renewable Generation Facility by virtue of not explicitly excluding coverage for such loss.

X. Additional Controls and Tests

A Host School's Renewable Generation Facility shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the requirements set forth in these Pilot Program guidelines, and to ensure public safety, power quality, and reliability of the Company's electric distribution system, the Host School whose Renewable Generation Facility meets those standards shall bear all reasonable costs of equipment required for the interconnection to the Company's electric distribution system, including costs, if any, to (i) install additional controls and (ii) perform additional tests. To the extent permissible under the Virginia Tort Claims Act,[3] the participating schools and school districts shall be responsible for any negligent acts or

omissions of their board members, employees, contractors, agents, students, or other representatives associated with the Pilot Program.

XI. Reports to the General Assembly

The Company shall submit a report to the General Assembly by December 1 of each year the Pilot Program is in effect, commencing in 2020, regarding the status of the Pilot Program's enrollment and any other information the Company deems appropriate.

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[1]HB 1451 was codified as § 56-585.1:7 of the Code of Virginia at the direction of the Virginia Code Commission.

[2]All 20 VAC 5-315 Rules definitions, which are applicable to the Host School, shall have the same meaning in these Pilot Program guidelines.

[3]Article 18.1 (§ 8.01 - 195.1, et. seq.) of Chapter 3 of Title 8.01 of the Code of Virginia.

BOARD OF DENTISTRY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Dentistry conducted a small business impact review of **18VAC60-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Dentistry is publishing its report of findings dated November 30, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board received no complaints or recommendations for change to public participation guidelines. There is no impact on small businesses.

Contact Information: Elaine Yeatts, Agency Regulatory Coordinator, Board of Dentistry, 9960 Mayland Drive, Richmond VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Mount Jackson Solar III LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Shenandoah County

Mount Jackson Solar III LLC has provided the Department of Environmental Quality a notice of intent to construct a small renewable energy project (solar) in Shenandoah County. The proposed Mount Jackson Solar III project will be a 16.2-megawatts alternating current photovoltaic solar facility on a portion of one parcel, totaling more or less 130 acres, roughly positioned south of Wissler Road and west of Turkey Knob Road, near Mount Jackson in Shenandoah County. The coordinates for that project are 38.727014, -78.674170. The project will be comprised of monocrystalline photovoltaic collectors and associated equipment.

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.

Pleasant Hill Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - City of Suffolk

Pleasant Hill 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 the City of Suffolk. Located approximately three miles south of downtown Suffolk on Hosier Road, the proposed project is a solar photovoltaic electricity generation facility on single-axis sun-tracking racks on roughly 160 acres of land, with a preliminary estimated capacity of 20 megawatts alternating current delivered via 73,000 modules.

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.

VSF Solar 2 LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Westmoreland County

VSF Solar 2 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 Westmoreland County pursuant to § 10.1-1197.6 B 1 of the Code of Virginia. The project will be located on roughly 100 acres of agricultural land southwest of the Town of Colonial Beach. The project is anticipated to have a nameplate capacity of 11 megawatts alternating current and will be comprised of approximately 39,210 solar panels. The coordinates are Latitude 38.245N/Longitude 76.992W.

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.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Funeral Directors and Embalmers conducted a small business impact review of **18VAC65-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Funeral Directors and Embalmers is publishing its report of findings dated November 30, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board received no complaints or recommendations for change to public participation guidelines. There is no impact on small businesses.

Contact Information: Elaine Yeatts, Agency Regulatory Coordinator, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Richmond VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

BOARD OF HEALTH PROFESSIONS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Health Professions conducted a small business impact review of **18VAC75-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Health Professions is publishing its report of findings dated November 30, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board received no complaints or recommendations for change to public participation guidelines. There is no impact on small businesses.

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

DEPARTMENT OF HEALTH PROFESSIONS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Health Professions conducted a small business impact review of **18VAC76-31, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Department of Health Professions is publishing its report of findings dated November 30, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The department received no complaints or recommendations for change to public participation guidelines. There is no impact on small businesses.

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

BOARD OF JUVENILE JUSTICE

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 Board of Juvenile Justice 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).

6VAC35-11, Public Participation Guidelines

6VAC35-190, Regulations Governing Juvenile Work and Educational Release Programs

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 December 24, 2018, and ends January 22, 2019.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Kristen Peterson, Regulatory Coordinator, Board of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 588-3902, FAX (804) 371-6497, or email kristen.peterson@djj.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.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Long-Term Care Administrators conducted a small business impact review of **18VAC95-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Long-Term Care Administrators is publishing its report of findings dated November 30, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board received no complaints or recommendations for change to public participation guidelines. There is no impact on small businesses.

Contact Information: Elaine Yeatts, Agency Regulatory Coordinator, Board of Long-Term Care Administrators, 9960 Mayland Drive, Richmond VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Opportunity for Public Review of the Draft Transportation Provider Manual

The draft chapters (Chapters 2, 4, and 5) of the Transportation Provider Manual are posted on the DMAS website at http://www.dmas.virginia.gov/#/manualdraft.

The Transportation Provider Manual will be finalized and officially posted by January 11, 2019, at https://www.virginiamedicaid.dmas.virginia.gov/wps/myportal/ProviderManual.

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.

BOARD OF MEDICINE

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Medicine conducted a small business impact review of **18VAC85-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Medicine is publishing its report of findings dated November 30, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board received no complaints or recommendations for change to public participation guidelines. There is no impact on small businesses.

Contact Information: Elaine Yeatts, Agency Regulatory Coordinator, Board of Medicine, 9960 Mayland Drive, Richmond VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

BOARD OF NURSING

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Nursing conducted a small business impact review of **18VAC90-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Nursing is publishing its report of findings dated November 30, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The board received no complaints or recommendations for change to public participation guidelines. There is no impact on small businesses.

Contact Information: Elaine Yeatts, Agency Regulatory Coordinator, Board of Nursing, 9960 Mayland Drive, Richmond VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

SAFETY AND HEALTH CODES BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board conducted a small business impact review of **16VAC25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated November 8, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continued need for this regulation because it most adequately protects Virginia workers from hazards in the steel erection industry. The regulation, as written, continues to protect the safety, health, and welfare of the public by limiting worker exposure to hazards, with the least cost to citizens and businesses of the Commonwealth. No comments were received during this periodic review. The regulation is not overly complex and is clearly written. It does not duplicate, overlap, or conflict with state or federal laws or regulations, and there is no apparent negative impact on the regulated community. The regulation was last reviewed in 2014. There have been little or no changes in technology, economic conditions, and other factors that would affect the regulation.

Contact Information: Holly Raney, Regulatory Coordinator, Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, email holly.raney@doli.virginia.gov.

STATE BOARD OF SOCIAL 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 State Board of Social Services 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).

22VAC40-295, Temporary Assistance for Needy Families (TANF)

22VAC40-470, Exemptions Applicable to Public Assistance Programs

22VAC40-601, Supplemental Nutrition Assistance 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 December 24, 2018, and ends January 14, 2019.

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 Vanea Preston, Assistant Director of the Division of Benefit Programs, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7889, FAX (804) 819-7184, or email vanea.preson@dss.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.

STATE WATER CONTROL BOARD

Proposed Consent Order for the Loudoun County Sanitation Authority

An enforcement action has been proposed for the Loudoun County Sanitation Authority for violations of the State Water Control Law and regulations at the Elysian Heights Sewage Treatment Plant located in Leesburg, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Elysian Heights Sewage Treatment Plant. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from December 25, 2018, through January 24, 2019.

Proposed Enforcement Action for Wash City LLC

An enforcement action has been proposed for Wash City LLC for violations of the State Water Control Law in Northampton County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Russell Deppe will accept comments by email at russell.deppe@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from December 24, 2018, to January 24, 2019.

Proposed Consent Order for Welbourne LP

An enforcement action has been proposed for Welbourne LP for violations of the State Water Control Law and regulations at the Welbourne Bed and Breakfast Sewage Treatment Plant located in Loudoun County, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Welbourne Bed and Breakfast Sewage Treatment Plant. 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 postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from December 25, 2018, through January 24, 2019.

STATE WATER CONTROL BOARD AND VIRGINIA WASTE MANAGEMENT BOARD

Proposed Consent Order for Fitzgerald's Orchards LLC

An enforcement action has been proposed for Fitzgerald's Orchards LLC for violations at the Fitzgerald's Orchard in Nelson County, Virginia. The State Water Control Board and the Virginia Waste Management Board propose to issue a consent order to Fitzgerald's Orchards LLC to address noncompliance with the State Water Control Law, Virginia Waste Management Act, 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. Tamara Ambler will accept comments by email at tamara.ambler@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, from December 24, 2018, to January 23, 2019.

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.