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; Malfourd W. Trumbo; Mark J. Vucci.**

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PUBLICATION SCHEDULE AND DEADLINES

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

July 2019 through August 2020

Volume: Issue	Material Submitted By Noon*	Will Be Published On
35:23	June 19, 2019	July 8, 2019
35:24	July 3, 2019	July 22, 2019
35:25	July 17, 2019	August 5, 2019
35:26	July 31, 2019	August 19, 2019
36:1	August 14, 2019	September 2, 2019
36:2	August 28, 2019	September 16, 2019
36:3	September 11, 2019	September 30, 2019
36:4	September 25, 2019	October 14, 2019
36:5	October 9, 2019	October 28, 2019
36:6	October 23, 2019	November 11, 2019
36:7	November 6, 2019	November 25, 2019
36:8	November 18, 2019 **(Monday)**	December 9, 2019
36:9	December 4, 2019	December 23, 2019
36:10	December 18, 2019	January 6, 2020
36:11	January 1, 2020	January 20, 2020
36:12	January 15, 2020	February 3, 2020
36:13	January 29, 2020	February 17, 2020
36:14	February 12. 2020	March 2, 2020
36:15	February 26, 2020	March 16, 2020
36:16	March 11, 2020	March 30, 2020
36:17	March 25, 2020	April 13, 2020
36:18	April 8, 2020	April 27, 2020
36:19	April 22. 2020	May 11, 2020
36:20	May 6, 2020	May 25, 2020
36:21	May 20, 2020	June 8, 2020
36:22	June 3, 2020	June 22, 2020
36:23	June 17, 2020	July 6, 2020
36:24	July 1, 2020	July 20, 2020
36:25	July 15, 2020	August 3, 2020

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Initial Agency Notice

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

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

Name of Petitioner: Joyce Samples.

Nature of Petitioner's Request: "Requesting that the Board review to amend the requirements to be a supervisor. Currently the requirements are two years post licensure work and either graduate class or 20-hour supervision training. I am requesting the Board amend the criteria from either two years to five years post licensure experience or have the individual document experience in all clinical areas. For example, working two years post licensure in administration should not be allowed to qualify since no clinical work has been performed."

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition will be filed with the Registrar of Regulations and published on June 10, 2019, with public comment requested until July 9, 2019. It will also be placed on the Virginia Regulatory Town Hall at https://www.townhall.virginia.gov and available for comments to be posted electronically. At its first meeting following the close of comment, which is scheduled for August 16, 2019, the board will consider the request to amend regulations and all comment received in support or opposition. The petitioner will be informed of the board's response and any action it approves.

Public Comment Deadline: July 9, 2019.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R19-34; Filed May 10, 2019, 8:11 a.m.

BOARD OF LONG-TERM CARE ADMINISTATORS

Initial Agency Notice

Title of Regulation: **18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.**

Statutory Authority: §§ 54.1-2400 and 54.1-3102 of the Code of Virginia.

Name of Petitioner: Bertha Simmons.

Nature of Petitioner's Request: 1) Allow an administrator-in-training who is an acting administrator to count more than 40 hours per week on the monthly report for training.

2) Allow some of the credit hours in an administrator-in-training program in assisted living to also count for training for nursing home licensure.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition was filed with the Registrar of Regulations and posted on the Virginia Regulatory Town Hall at https://www.townhall.virginia.gov. Public comment will be requested from interested parties until July 9, 2019. The petition and copies of all comment will be considered by the Board of Long-Term Care Administrators at its meeting scheduled for September 12, 2019. After considering the request and reviewing the comments, the board will decide whether to initiate rulemaking or deny the petition and retain the current requirements.

Public Comment Deadline: July 9, 2019.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Long-Term Care Administrators, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4595, or email corie.wolf@dhp.virginia.gov.

VA.R. Doc. No. R19-33; Filed May 10, 2019, 12:14 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board has WITHDRAWN the Notice of Intended Regulatory Action for **6VAC20-290, Rules Relating to Minimum Training Standards for Juvenile Corrections Officers,** which was published in 32:4 VA.R. 450 October 19, 2015. Pursuant to Chapter 366 of the 2019 Acts of Assembly, the regulatory responsibility to establish minimum training standards for juvenile correctional officers was transferred from the Criminal Justice Services Board to the State Board of Juvenile Justice.

Statutory Authority: § 9.1-102 of the Code of Virginia.

Agency Contact: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 225-3853, or email barbara.peterson-wilson@dcjs.virginia.gov.

VA.R. Doc. No. R16-3958; Filed May 10, 2019, 8:59 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-412, Regulations for Licensure of Abortion Facilities**. The purpose of the proposed action is to assess all current regulation content and determine whether it should be amended or retained in its current form. This regulation governs the licensure of facilities that perform five or more first trimester abortions per month. This action may address comments received during the public comment period for this notice and subsequent stages of this action, as well as comments received during the public hearing.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Public Comment Deadline: July 10, 2019.

Agency Contact: Rebekah E. Allen, Senior Policy Analyst, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, FAX (804) 527-4502, or email regulatorycomment@vdh.virginia.gov.

VA.R. Doc. No. R19-5664; Filed May 22, 2019, 11:16 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

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 Funeral Directors and Embalmers intends to consider amending **18VAC65-40, Regulations for the Funeral Service Internship Program**. The purpose of the proposed action is to reduce the required hours of internship from 3,000 to 2,000 for funeral service interns.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2817 of the Code of Virginia.

Public Comment Deadline: July 10, 2019.

Agency Contact: Corie Tillman-Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email corie.wolf@dhp.virginia.gov.

VA.R. Doc. No. R19-5971; Filed May 16, 2019, 2:59 p.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to consider amending **18VAC120-30, Regulations Governing Polygraph**

Examiners. The purpose of the proposed action is to extend the license term and reinstatement periods currently in place. The amendments will eliminate the requirement that licenses be renewed annually and, by extending the reinstatement period, provide a longer amount of time a licensee may be late with a renewal payment before the license is terminated.

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

Statutory Authority: §§ 54.1-113 and 54.1-1802.1 of the Code of Virginia.

Public Comment Deadline: July 10, 2019.

Agency Contact: Eric L. Olson, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-7226, FAX (866) 430-1033, or email polygraph@dpor.virginia.gov.

VA.R. Doc. No. R19-5965; Filed May 14, 2019, 2:56 p.m.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

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: **1VAC20-40. Voter Registration.**

Agency Contact: Samantha Buckley, Policy and Planning Specialist II, Virginia Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8948, or email samantha.buckley@elections.virginia.gov.

FORMS (1VAC20-40)

~~Virginia Voter Registration Application Form, VA-NVRA-1 (rev. 4/2016)~~

Virginia Voter Registration Application Form, VA-NVRA-1 (rev. 7/2019)

National Voter Registration Application Form, Register to Vote in Your State by Using this Postcard Form and Guide (rev. 3/2006)

Voter Photo Identification Card Application (undated)

VA.R. Doc. No. R19-6011; Filed May 14, 2019, 3:44 p.m.

Proposed Regulation

Title of Regulation: **1VAC20-90. Campaign Finance and Political Advertisements (adding 1VAC20-90-30).**

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

Public Hearing Information:

August 6, 2019 - 1 p.m. - Virginia State Capitol, Senate Room 3, Richmond, VA 23219

Public Comment Deadline: August 9, 2019.

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

Basis: The Department of Elections is promulgating this regulation on behalf of the State Board of Elections (the board) per § 24.2-103 of the Code of Virginia.

Purpose: Current campaign finance summaries define express advocacy as a direct or indirect contribution, in-kind contribution, independent expenditure, or loan made to a candidate or political committee for the purpose of influencing the outcome of an election; or an advertisement that refers to a party or candidate by name and states "Vote for…"; "Support…"; "Elect…"; "Smith for Congress"; "Send him home"; "Oppose..." etc. The board has repeatedly expressed concern that the definition currently included in campaign finance summaries does not provide sufficient clarity to citizens and entities of the Commonwealth wishing to sponsor political campaign advertisements.

The purpose of this regulation is to provide the State Board of Elections with authority to regulate campaign advertisements that unambiguously call for the election or defeat of a candidate; to further the public welfare and public interest in fair and fully informed elections by requiring sponsors of campaign advertisements to identify to the public who paid for or sponsored the advertisement; and in cases where another candidate is mentioned, to inform the public whether candidates mentioned in the advertisements did or did not approve the advertisement.

Substance: This regulatory action adds the definition of "express advocacy" to the Virginia Administrative Code. The proposed definition is taken from federal regulations governing campaign finance.

Issues: The primary advantage to the public, the Commonwealth, and the Department of Elections is that this amendment clarifies which political advertisements must be disclosed. This clarity also advantages sponsors of political advertisements by making them aware that, regardless of whether certain words are used, advertisements that expressly advocate must be disclosed. The advantage of the amendment to the public is that they will be able to see which candidate or sponsor paid for a political advertisement. The Department of Elections is not aware of any disadvantages of implementing the amendment.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Elections (Board) proposes to adopt the federal definition of "express advocacy." The definition of express

advocacy is important in determining if disclosure statements need to be made in advertisements.

Result of Analysis. Whether the benefits exceed the costs depend on the policy views of the observer. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. Generally speaking, disclosure statements identify the person(s) or organization(s) that has paid for the advertisement. Code of Virginia § 24.2-955 states that disclosure requirements for political campaign advertisements apply to any sponsor of an advertisement in the print media or on radio or television the cost or value of which constitutes an expenditure or contribution.[1] "Expenditure" is defined in § 24.2-945.1 as:

> "money and services of any amount, and any other thing of value, paid, loaned, provided, or in any other way disbursed by any candidate, campaign committee, political committee, or person for the purpose of expressly advocating the election or defeat of a clearly identified candidate or by any inaugural committee for the purpose of defraying the costs of the inauguration of a Governor, Lieutenant Governor, or Attorney General."

"Contribution" is defined in § 24.2-945.1 as:

> "money and services of any amount, in-kind contributions, and any other thing of value, given, advanced, loaned, or in any other way provided to a candidate, campaign committee, political committee, or person for the purpose of expressly advocating the election or defeat of a clearly identified candidate or to an inaugural committee for the purpose of defraying the costs of the inauguration of a Governor, Lieutenant Governor, or Attorney General. "Contribution" includes money, services, or things of value in any way provided by a candidate to his own campaign and the payment by the candidate of a filing fee for any party nomination method."

Thus, the definition of express advocacy is important in determining if disclosure statements need to be made in political campaign advertisements.

> The Board currently uses the following definition for "express advocacy":
>
> "a direct or indirect contribution, in-kind contribution, independent expenditure or loan made to a candidate or political committee for the purpose of influencing the outcome of an election; an advertisement that refers to a party or candidate(s) by name and states "Vote for…"; "Support"; "Elect…"; "Smith for Congress"; "Send Him Home"; "Oppose", etc."

There has been concern that this definition has provided a loophole by effectively permitting the absence of disclosure statements for political advertising that is intended to affect the outcome of an election, but does not use the specific wording listed above. Consequently, the Board proposes to adopt the federal definition of "express advocacy," which is expected to close the loophole. This definition includes the specific wording above, and adds:

or any variations thereof or any communication when taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates because (i) the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (ii) reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates.

The proposed new definition does appear to close the loophole and would require that more advertising be accompanied with disclosure statements. For those who believe the more transparent political campaigns and their associated advertising are, the better, the Board's proposed new definition would produce a net benefit. For those who believe privacy should trump transparency, the proposed new definition of "express advocacy" would not be beneficial.

Businesses and Entities Affected. The proposed amendment affects persons and organizations that pay for political advertisements.

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

Projected Impact on Employment. The proposed amendment is unlikely to affect employment.

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

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

Small Businesses:

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

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

Alternative Method that Minimizes Adverse Impact. The proposed amendment is unlikely to adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment is unlikely to adversely affect businesses.

Localities. The proposed amendment is unlikely to adversely affect localities.

Other Entities. The proposed amendments is unlikely to adversely affect other entities.

[1]The Code section exempts "(i) an individual who makes independent expenditures aggregating less than $1,000 in an election cycle for or against a candidate for statewide office or less than $200 in an election cycle for or against a candidate for any other office or (ii) an individual who incurs expenses only with respect to a referendum."

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

Summary:

The proposed amendment adopts a definition of "express advocacy."

1VAC20-90-30. Express advocacy.

When used in Chapter 9.3 (§ 24.2-945 et seq.) and Chapter 9.5 (§ 24.2-955 et seq.) of Title 24.2 of the Code of Virginia, "expressly advocating" or any variation thereof shall mean any communication that uses phrases such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject," or any variation thereof or any communication when taken as a whole and with limited reference to external events, such as the proximity to the election, that could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates because (i) the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning and (ii) reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates.

VA.R. Doc. No. R19-5607; Filed May 17, 2019, 2:26 p.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

Title of Regulation: **2VAC5-675. Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services (amending 2VAC5-675-20 through 2VAC5-675-50).**

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

Effective Date: July 11, 2019.

Agency Contact: Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 371-2283, TTY (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

Summary:

The amendments adjust the current fee structure for licensure, registration, and certification to reflect actual costs of program implementation and include a fee increase for commercial pesticide applicator certification, registered technician certification, pesticide business licensure, and pesticide product registration.

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

Part II
Fees

2VAC5-675-20. Pesticide product registration fee; registration of new pesticide products; renewal of pesticide product registration.

A. Every pesticide product ~~which is to be~~ manufactured, distributed, sold, offered for sale, used, or offered for use within the Commonwealth shall be registered with the commissioner. The fee for registering each brand shall be ~~$160~~ $225. If a brand has more than one grade, each grade shall be registered, not the brand at the registration fee then in effect. The registration for a new pesticide product shall be effective upon receipt by the Department of Agriculture and Consumer Services of the application form accompanied by the required registration fee.

B. All pesticide product registrations shall expire on December 31 of each year unless canceled or otherwise terminated for cause. A registration not canceled or otherwise terminated for cause will be renewed upon receipt of the annual registration fee as set forth in subsection A of this section accompanied by the application renewal form. A registration that has been canceled or otherwise terminated for cause prior to December 31 may be resubmitted as a new registration when the conditions resulting in the cancellation or termination have been resolved. The registration of each brand or grade shall be renewed with the commissioner prior to December 31 of each year. If the registration is not renewed prior to December 31 of each year, the commissioner shall assess a late fee of 20% that shall be added to the registration fee. The late fee shall apply to all renewal registrations submitted to the department any time during the 12-month period following the expiration of the registration. Registrants who permit a registration to lapse for more than one year shall thereafter register the product as a new product. The applicant shall pay the total fee prior to the issuance of the registration by the commissioner.

2VAC5-675-30. Commercial applicator certificate fee.

Any person applying for a certificate as a commercial applicator shall pay to the department an initial nonrefundable certificate fee of ~~$70~~ $100 and a biennial nonrefundable renewal fee of ~~$70~~ $100 thereafter. All certificates shall expire at midnight on June 30 in the second year after issuance unless suspended or revoked for cause. All certificates not suspended or revoked for cause will be renewed upon receipt of the biennial renewal fee. If the applicator does not file an application for renewal of his certificate prior to COB June 30, the commissioner shall assess a late filing fee of 20% that shall be added to the renewal fee. The applicant shall pay the total fee prior to the commissioner's issuance of the renewal. However, if the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination or for any commercial applicator reexamination pursuant to subsection C of § 3.2-3930 of the Code of Virginia shall be ~~$70~~ $100 and shall be nonrefundable. Any person applying to add a category or subcategory to his certificate shall pay to the department a nonrefundable fee of $35. Federal, state, and local government employees certified to use, or supervise the use of, pesticides in government programs shall be exempt from any certification fees.

2VAC5-675-40. Registered technician certificate fee.

Any person applying for a certificate as a registered technician shall pay to the department an initial nonrefundable certificate fee of ~~$30~~ $50 and a biennial nonrefundable renewal fee of ~~$30~~ $50 thereafter. All certificates shall expire at midnight on June 30 in the second year after issuance unless suspended or revoked for cause. A certificate not suspended or revoked for cause will be renewed upon receipt of the biennial renewal fee. If the application for renewal of any certificate is not filed prior to COB June 30, a late filing fee of 20% shall be assessed and added to the renewal fee and shall be paid by the applicant before the renewal shall be issued. If the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination pursuant to subsection C of § 3.2-3930 of the Code of Virginia shall be ~~$30~~ $50 and shall be nonrefundable. Federal, state, and local government employees certified to use pesticides in government programs shall be exempt from any certification fees.

2VAC5-675-50. Business license fee.

Any pesticide business that distributes, stores, sells, recommends for use, mixes, or applies pesticides shall pay a nonrefundable annual pesticide business licensing fee of ~~$50~~ $150 for each location or outlet that [~~he or~~] it operates. All business licenses will expire at midnight on March 3l of each year unless suspended or revoked for cause. If a business license is not suspended or revoked for cause, it will be renewed upon payment of the annual fee. If any person operating as a pesticide business fails to apply for renewal of a pesticide business license by COB March 31 the applicant, as a condition of renewal, shall pay a late license fee of 20% of the licensing fee in addition to that fee. Merchants of limited quantities of nonrestricted use pesticides including grocery stores, convenience stores, drug stores, veterinarians, and other businesses [~~who~~ that] sell pesticides primarily for limited household use shall be exempt from the business license requirement.

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 (2VAC5-675)

~~Application for New Pesticide Product Registration/Additional Information and Instructions, VDACS—07208 (rev. 7/12).~~

~~Application for Virginia Pesticide Business License to sell, distribute, store, apply, or recommend pesticides for use, VDACS—07209 (eff. 9/06).~~

~~Application for Reciprocal Pesticide Applicator Certificate/Commercial Pesticide Applicator Categories, VDACS—07210 (eff. 5/09).~~

~~Commercial Pesticide Applicator Certification Application/Eligibility Requirements for Commercial Applicator Certification, VDACS—07211 (rev. 7/12).~~

~~Pesticide Registered Technician Application/General Training Requirements for Registered Technicians, VDACS—07212 (eff. 1/09).~~

~~Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination/Commercial Pesticide Applicator Categories, VDACS—07218 (eff. 1/09).~~

Application for New Pesticide Product Registration/Additional Information and Instructions, VDACS-07208 (rev. 7/2017)

Application for Virginia Pesticide Business License to sell, distribute, store, apply, or recommend pesticides for use, VDACS-07209 (rev. 7/2017)

Application for Reciprocal Pesticide Applicator Certificate/Commercial Pesticide Applicator Categories, VDACS-07210 (rev. 7/2017)

Commercial Pesticide Applicator Certification Application/Eligibility Requirements for Commercial Applicator Certification, VDACS-07211 (rev. 7/2017)

[~~Pesticide Registered Technician Application/General Training Requirements for Registered Technicians, VDACS-07212 (rev. 7/2017)~~

Pesticide Registered Technician Application/General Training Requirements for Registered Technicians, VDACS-07212-A (rev. 7/2018)

Pesticide Registered Technician Request for Authorization to Take Pesticide Applicator Examination, VDACS-07212-B (eff. 7/2018)]

Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination/Commercial Pesticide Applicator Categories, VDACS-07218 (rev. 7/2017)

VA.R. Doc. No. R17-5041; Filed May 22, 2019, 10:36 a.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Proposed Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-160).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 11, 2019.

Agency Contact: LaTonya D. Hucks-Watkins, Legal Liaison, Virginia Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@abc.virginia.gov.

Basis: The Board of Directors of the Virginia Alcoholic Beverage Control Authority (ABC) is granted the authority to promulgate regulations under § 4.1-101 of the Code of Virginia, and § 4.1-111 of the Code of Virginia provides the board with the authority to adopt reasonable regulations that "...shall prescribe the terms for any 'happy hour' conducted by on-premises licensees. Such regulations shall permit on-premises licensees to advertise any alcoholic beverage products featured during a happy hour but prohibit the advertising of any pricing related to such happy hour."

Purpose: Virginia ABC has undertaken this action as a measure to allow its licensees to engage in responsible advertising for happy hour events. These changes will provide the public with a regulation that is condensed and easily accessible and understandable by eliminating some redundancies and clarifying the rules relating to happy hour advertising, all of which lends itself to the ongoing protection of the health, safety, and welfare of citizens. Virginia ABC does not anticipate any potential issues that would have to be addressed as this regulation is developed. Virginia ABC hopes that the change will afford licensees more discretion in the language that they choose to use in their advertising while still maintaining compliance with the Code of Virginia.

Substance: The substantive changes to the existing regulation include adding a new subsection B to 3VAC5-50-160 that permits happy hour advertising so long as the advertisement does not induce minors or interdicted individuals to consume alcohol or encourage people to consume in excess. The section is relabeled to accommodate the addition of the regulation permitting happy hour advertising, and a cross reference to the definition of "advertising" in 3VAC5-20-10 is included. Subdivisions B 2, B 5, and B 6 are deleted because those provisions are addressed in other regulations.

Subsection E is added and includes a provision that the regulation is subject to and shall be adhered to in a manner consistent with all other regulations of the authority.

Issues: The primary advantage to the public is that licensees will have more discretion in advertising happy hour events, provided they do so responsibly and according to the provisions of the Code of Virginia. The primary advantage to the agency is that the regulation maintains compliance the Code of Virginia and removes some redundancies. There are no disadvantages to the public or Commonwealth associated with this regulatory change.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Alcoholic Beverage Control Board of Directors (Board) proposes to repeal prescriptive restrictions on happy hour advertising.

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

Estimated Economic Impact. Section 4.1-111(B)(15) of the Code of Virginia authorizes the Board to permit on-premises licensees to advertise any alcoholic beverage products featured during a happy hour. The statute, however, prohibits the advertising of any pricing related to such happy hour.[1]

Under the current regulation, licensees are prohibited to advertise happy hour anywhere other than within the interior of the licensed premises unless they only use the terms "Happy Hour" or "Drink Specials" in outside advertisements and only provide a list of the alcoholic beverage products featured during a happy hour as well as the time period within which alcoholic beverages are being sold at reduced prices.

The Board proposes to repeal this permissive but prescriptive language allowing happy hour advertising only in certain ways, which would effectively afford licensees more discretion in how they advertise their happy hour event. However, the Board also proposes to add new language stating that a licensee may advertise its happy hour so long as the advertising does not tend to induce minors or other interdicted individuals to drink or encourage persons to consume to excess; and that the new language is subject to and shall be adhered to in a manner consistent with all other regulations of the authority. As a result, licensees would be allowed to advertise as they wish so long as they do not induce minors, encourage excess consumption, and do comply with the other regulations of the Board. These changes would benefit the licensees in terms of the flexibility they would provide for happy hour advertising, but also establish performance criteria on what the advertisement shall not do.

The remaining changes repeal language duplicative of other regulations, which are not expected to create any economic impact.

Businesses and Entities Affected. There are 7,579 on-premises alcoholic beverage licensees. Most of the licensees are likely small businesses such as restaurants, bars, grocery stores, wineries, etc. According to the Virginia Alcoholic Beverage Control Authority, there were three advertising-related violations in the last three calendar years.

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

Projected Impact on Employment. The proposed changes are unlikely to affect employment.

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

Real Estate Development Costs. The proposed changes would 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 changes would not have costs on small businesses licensees, but allow more flexibility in how they advertise their happy hour events.

Alternative Method that Minimizes Adverse Impact. The proposed changes would not impose adverse impacts on small businesses.

Adverse Impacts:

Businesses. The proposed changes would not impose adverse impacts on non-small business licenses.

Localities. The proposed changes would not adversely affect localities.

Other Entities. The proposed changes would not adversely affect other entities.

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[1]According to the Alcoholic Beverage Control Authority, an advertisement that does not state the dollar price is allowed. For example, an advertisement stating "one-half of regular menu price during happy hour" is not prohibited.

Agency's Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

The proposed amendments (i) permit advertising of happy hour so long as the advertisement does not tend to induce minors or other individuals who cannot legally drink to drink or encourage persons to drink in excess, (ii) remove superfluous provisions that appear in other authority regulations, and (iii) add a reminder that the regulation is subject to and shall be adhered to in a manner consistent with all other authority regulations.

3VAC5-50-160. Happy hour and related promotions; definitions; exceptions.

A. Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

1. "Happy hour" means a specified period of time during which alcoholic beverages are sold at prices reduced from the customary price established by a retail licensee.

2. "Drink" means any beverage containing the amount of alcoholic beverages customarily served to a patron as a single serving by a retail licensee.

B. A licensee may advertise its happy hour so long as the advertising does not tend to induce minors or other interdicted individuals to drink or encourage persons to consume to excess.

C. No retail licensee shall engage in any of the following practices:

1. Conducting a happy hour between 9 p.m. of each day and 2 a.m. of the following day;

~~2. Allowing a person to possess more than two drinks at any one time during a happy hour, with the exception of flights of wine and beer consisting of samples of not more than five different wines or beers or samples of five different distilled spirits products provided each distilled~~

~~spirits sample contains no more than one-half ounce of distilled spirits;~~

~~3.~~ 2. Increasing the volume of alcoholic beverages contained in a drink without increasing proportionately the customary or established retail price charged for such drink;

~~4.~~ 3. Selling two or more drinks for one price, such as "two for one" or "three for one";

~~5. Selling pitchers of mixed beverages except in accordance with 3VAC5-50-60;~~

~~6. Giving away drinks;~~

~~7.~~ 4. Selling an unlimited number of drinks for one price, such as "all you can drink for $5.00"; ~~8. Advertising happy hour anywhere other than within the interior of the licensed premises, except that a licensee may use the term "Happy Hour" or "Drink Specials," a list of the alcoholic beverage products featured during a happy hour as well as the time period within which alcoholic beverages are being sold at reduced prices in any otherwise lawful advertisement;~~ or

~~9.~~ 5. Establishing a customary retail price for any drink at a markup over cost significantly less than that applied to other beverages of similar type, quality, or volume.

~~C.~~ D. This ~~regulation~~ section shall not apply to prearranged private parties, functions, or events, not open to the public, where the guests thereof are served in a room or rooms designated and used exclusively for private parties, functions, or events.

E. This section is subject to and shall be adhered to in a manner consistent with all other regulations of the authority.

VA.R. Doc. No. R19-5585; Filed May 15, 2019, 6:15 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-20, 4VAC20-252-80, 4VAC20-252-100; repealing 4VAC20-252-60, 4VAC20-252-70).**

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

Effective Date: May 28, 2019.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments eliminate the Bay, Coastal, and Potomac River tributaries spring trophy-size striped bass recreational fisheries.

4VAC20-252-20. Definitions.

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

"Chesapeake area" means the area that includes the Chesapeake Bay and its tributaries and the Potomac River tributaries.

"Chesapeake Bay and its tributaries" means all tidal waters of the Chesapeake Bay and its tributaries within Virginia, westward of the shoreward boundary of the Territorial Sea, excluding the coastal area and the Potomac River tributaries as defined by this section.

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

"Commercial fishing" or "fishing commercially" or "commercial fishery" means fishing by any person where the catch is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

"Commission" means the Marine Resources Commission.

"Great Wicomico-Tangier Striped Bass Management Area" means the area that includes the Great Wicomico River and those Virginia waters bounded by a line beginning at Dameron Marsh at NAD 83 North Latitude 37-46.9535, West Longitude 76-17.1294; thence extending to the southernmost point of Tangier Island, and thence north to a point on the Virginia-Maryland state boundary at NAD 83 North Latitude 37-57.0407, West Longitude 75-58.5043, thence westerly along the Virginia-Maryland state boundary to Smith Point.

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

"Recreational fishing" or "fishing recreationally" or "recreational fishery" means fishing by any person, whether licensed or exempted from licensing, where the catch is not for sale, barter, trade, or any commercial purpose, or is not intended for sale, barter, trade, or any commercial purpose.

"Recreational vessel" means any vessel, kayak, charter vessel, or headboat participating in the recreational striped bass fishery.

"Share" means a percentage of the striped bass commercial harvest quota.

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

"Spawning reaches" means sections within the spawning rivers as follows:

1. James River from a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point.

2. Pamunkey River from the Route 33 Bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore.

3. Mattaponi River from the Route 33 Bridge at West Point upstream to the Route 360 bridge at Aylett.

4. Rappahannock River from the Route 360 Bridge at Tappahannock upstream to the Route 1 Falmouth Bridge.

"Spear" or "spearing" means to fish while the person is fully submerged under the water's surface with a mechanically aided device designed to accelerate a barbed spear.

"Striped bass" means any fish of the species Morone saxatilis, including any hybrid of the species Morone saxatilis.

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

~~"Trophy size striped bass" means any striped bass that is 36 inches or greater in total length.~~

4VAC20-252-60. ~~Bay and Coastal spring trophy size striped bass recreational fisheries.~~ (Repealed.)

~~A. The open season for the Bay spring trophy size striped bass recreational fishery shall be May 1 through June 15, inclusive.~~

~~B. The area open for the Bay spring trophy size striped bass recreational fishery shall be the Chesapeake Bay and its tributaries, except the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers.~~

~~C. The open season for the Coastal spring trophy size striped bass recreational fishery shall be May 1 through May 15, inclusive.~~

~~D. The area open for the Coastal spring trophy size striped bass recreational fishery is the coastal area as described in 4VAC20-252-20.~~

~~E. The minimum size limit for the fisheries described in this section shall be 36 inches total length.~~

~~F. The possession limit for the fisheries described in this section shall be one fish per person.~~

~~G. It shall be unlawful for any person participating in any Bay spring trophy size striped bass recreational fishery or Coastal spring trophy size striped bass recreational fishery to possess or land any trophy size striped bass from a recreational vessel unless the captain or operator of that recreational vessel has obtained a Spring Recreational Striped Bass Trophy Permit. The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide his Marine Resources Commission identification (MRC ID) number, the date of harvest, the number of individuals on board, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy size striped bass kept or released.~~

~~H. It shall be unlawful for any person participating in any Bay spring trophy size striped bass recreational fishery or Coastal spring trophy size striped bass recreational fishery to possess or land any trophy size striped bass harvested recreationally from shore, a pier, or any other man-made structure without first having obtained a Spring Recreational Striped Bass Trophy Permit from the Marine Resources Commission. Any such permittee shall provide his MRC ID number, the date of harvest, the mode of fishing, the water body where the trophy size striped bass was caught, and the number of trophy size striped bass kept or released.~~

~~I. It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report trips where striped bass are caught, whether harvested, released, or possessed, as described in this section, on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where striped bass are targeted but not successfully caught by the 21st day after any close of the Bay spring trophy size striped bass recreational fishery or Coastal spring trophy size striped bass recreational fishery.~~

~~1. Any permittee who did not participate in any Bay spring trophy size striped bass recreational fishery or Coastal spring trophy size striped bass recreational fishery shall notify the commission of his lack of participation by the 21st day after the close of any Bay spring trophy size striped bass recreational fishery or Coastal spring trophy size striped bass recreational fishery on forms provided by~~

~~the commission or through the Virginia Saltwater Fisherman's Journal.~~

~~2. Following the 21st day after the close of any Bay spring trophy size striped bass or Coastal spring trophy size striped bass recreational season, any permittee who failed to report, whether there was harvest or no activity during that season, shall be ineligible to receive a Spring Recreational Striped Bass Trophy Permit for the following trophy size striped bass season but shall be eligible to reapply for that permit in subsequent years.~~

4VAC20-252-70. ~~Potomac River tributaries spring trophy size striped bass recreational fishery.~~ (Repealed.)

~~A. The open season for the Potomac River tributaries spring striped bass recreational fishery shall correspond to the open season as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring fishery.~~

~~B. The area open for this fishery shall be those tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the Route 301 bridge.~~

~~C. The minimum size limit for this fishery shall correspond to the minimum size limit as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring trophy size fishery.~~

~~D. The possession limit for this fishery shall be one fish per person.~~

~~E. It shall be unlawful for any person participating in any Potomac River tributaries spring trophy size striped bass recreational fishery to possess or land any trophy size striped bass from a recreational vessel unless the captain or operator of that recreational vessel has obtained a Spring Recreational Striped Bass Trophy Permit. The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide his Marine Resources Commission identification (MRC ID) number, the date of harvest, the number of individuals on board, the mode of fishing, the water body where the trophy size striped bass was caught, and the number of trophy size striped bass kept or released.~~

~~F. It shall be unlawful for any person participating in any Potomac River tributaries spring trophy size striped bass recreational fisheries to possess or land any trophy size striped bass harvested recreationally from shore, a pier, or any other man-made structure without first having obtained a Spring Recreational Striped Bass Trophy Permit from the Marine Resources Commission. Any such permittee shall provide his MRC ID number, the date of harvest, the mode of fishing, the water body where the trophy size striped bass was caught, and the number of trophy size striped bass kept or released.~~

~~G. It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report trips where striped bass are caught, whether harvested, released, or possessed, as described in this section, on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where striped bass are targeted but not successfully caught by the 21st day after the close of any Potomac River tributaries spring trophy size striped bass recreational fishery.~~

~~1. Any permittee who did not participate in any Potomac River tributaries spring trophy size striped bass recreational fishery shall notify the commission of his lack of participation by the 21st day after the close of any Potomac River tributaries spring trophy size striped bass recreational fishery on forms provided by the commission or through the Virginia Saltwater Fisherman's Journal.~~

~~2. Following the 21st day after the close of any Potomac River tributaries recreational spring trophy size striped bass season, any permittee who failed to report, whether there was harvest or no activity during that season, shall be ineligible to receive a Spring Recreational Striped Bass Trophy Permit for the following trophy size striped bass season but shall be eligible to reapply for that permit in subsequent years.~~

4VAC20-252-80. Bay ~~Spring/Summer Striped Bass Recreational Fishery~~ spring/summer striped bass recreational fishery.

A. The open season for the Bay ~~Spring/Summer Striped Bass Recreational Fishery~~ spring/summer striped bass recreational fishery shall be May 16 through June 15 inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be 20 inches total length, and the maximum size limit for this fishery shall be 28 inches total length~~, except as provided in subsection E of this section~~.

D. The possession limit for this fishery shall be two fish per person.

~~E. The possession limit described in subsection D of this section may consist of one trophy size striped bass 36 inches or greater in total length, which is subject to the provisions of subsections A, B, E, F, G, H, I, and J of 4VAC20-252-60.~~

4VAC20-252-100. Potomac River tributaries summer/fall striped bass recreational fishery.

A. The open season for the Potomac River tributaries summer/fall striped bass fishery shall correspond to the open summer/fall season as established by the Potomac River Fisheries Commission for the mainstem Potomac River, except as provided in subsection D of this section.

B. The area open for this fishery shall be the Potomac River tributaries.

C. The minimum size limit for this fishery shall be 20 inches total length.

D. The maximum size limit for this fishery shall be 28 inches total length~~; however, the maximum size limit shall only apply to one fish of the possession limit~~ from May 16 through June 15.

E. The possession limit for this fishery shall be two fish per person.

VA.R. Doc. No. R19-5973; Filed May 28, 2019, 1:59 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: **4VAC20-1340. Fast-Track Permitting Program for Disposal of Dredged Material (adding 4VAC20-1340-10 through 4VAC20-1340-40).**

Statutory Authority: § 28.2-103 of the Code of Virginia.

Effective Date: June 1, 2019.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

Pursuant to Chapter 449 of the 2018 Acts of Assembly, this chapter establishes a fast-track permitting program for dredging and the selection and use of appropriate sites for disposal of dredge material on state-owned submerged lands for projects in Tidewater Virginia. The new chapter includes requirements for the permit application, qualifications for authorization of projects, and implementation of the fast-track permitting program.

CHAPTER 1340
FAST-TRACK PERMITTING PROGRAM FOR DISPOSAL OF DREDGED MATERIAL

4VAC20-1340-10. Purpose.

The purpose of this chapter is to establish the necessary application requirements and review procedures for fast-track permitting of dredging and dredged material disposal sites involving state-owned submerged lands. Fast-track permitting shall be available only to local governments in Tidewater Virginia, as "Tidewater Virginia" is defined in § 28.2-100 of the Code of Virginia.

4VAC20-1340-20. Definitions.

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

"Coastal resilience" means the ability of natural and built coastal environments to withstand and recover from hazardous events such as extreme weather, storm surge, and recurrent flooding.

"Joint Permit Application" means the current standard application utilized by the U.S. Army Corps of Engineers, Virginia Marine Resources Commission, Virginia Department of Environmental Quality, and local wetlands boards to evaluate projects involving submerged lands, wetlands, and coastal primary sand dunes and beaches for permit review.

"Living shoreline" means the same as defined in § 28.2-104.1 of the Code of Virginia, that is, a shoreline management practice that provides erosion control and water quality benefits; protects, restores, or enhances shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic material.

"Local government" means counties, cities, towns, and political subdivisions of the Commonwealth.

"Sand" or "beach sand" means material that is SM (silty sands), SP (poorly graded sand), or SW (well graded sand), using the Unified Soil Classification System, with a minimum median grain size of around 0.25 mm with no more than 20% passing through a #100 sieve (0.149mm) and no more than 10% passing through a #200 sieve (0.074mm).

"Sand dunes and beaches" means the jurisdictional areas defined as "coastal primary sand dunes" and "beaches" in § 28.2-1400 of the Code of Virginia.

"Submerged aquatic vegetation bed" or "SAV bed" means those areas of submerged aquatic vegetation identified and annually mapped by Virginia Institute of Marine Science (VIMS) during at least one of the previous five years. "Submerged aquatic vegetation" means any of a diverse assemblage of underwater plants found in the shoal areas of the Chesapeake Bay and Virginia's coastal bays and river tributaries, that are primarily eelgrass (Zostera marina), widgeon grass (Ruppia maritima), or may include Eurasian watermilfoil (Myriophyllum spicatum), redhead grass (Potamogeton perfoliatus), wild celery (Vallisneria americana), common elodea (Elodea canadensis), water stargrass (Heteranthera dubia), coontail (Ceratophyllum demersum), water-weed (Egeria densa), muskgrass (Najas minor), pondweeds (Potamogeton sp.), Hydrilla (Hydrilla verticillata), and naiads (Najas sp.).

"VMRC" means the Virginia Marine Resources Commission.

"Wetlands" means the jurisdictional areas defined as "vegetated wetlands" and "nonvegetated wetlands" in § 28.2-1300 of the Code of Virginia.

4VAC20-1340-30. Applicability and procedures.

A. Fast-track consideration of Joint Permit Applications for dredging projects and associated dredge material disposal sites involving state-owned submerged lands shall be provided to local governments in Tidewater Virginia when shoreline or open water placement of dredge material is preferable for habitat creation or development of living shoreline features or to enhance coastal resilience.

B. When placement of dredge material does not involve use of state-owned submerged lands, upland disposal sites must be identified in the Joint Permit Application.

C. To qualify for fast-track review, the applicant must submit to VMRC a request for fast-track review, a complete Joint Permit Application, the additional information identified in subsection D of this section, and any supplemental information deemed necessary by VMRC or the applicable wetlands board.

D. The application shall include a dredging plan, a dredged material placement plan, and the following additional information:

1. Geotechnical analysis of the material in the proposed channel to be dredged, unless the dredged material is sand with the same properties as the sand at the placement location and the placement location is adjacent to the dredge site;

2. Chemical analysis of the material to be dredged when VMRC determines chemical analysis is necessary due to the presence of known chemical contaminates;

3. Analysis of the benthic, marine, and fishery resources in the placement site;

4. Current recreational and commercial fishing activity in the proposed dredge and placement areas;

5. Any impact on historical artifacts in the proposed dredge and placement areas;

6. Any impact on other uses of the state waters and bottomlands at the dredge and placement sites; and

7. Anticipated environmental impact of the dredge material proposed for placement on (i) wetlands, dunes or beaches, submerged lands, and (ii) nearby benthic, marine, and fishery resources, including an assessment of any coastal resilience or beneficial ecological services provided by such placement.

E. VMRC, in consultation with the Department of Environmental Quality, the Virginia Department of Health, the Department of Historic Resources, the Virginia Institute of Marine Science, and any other interested state agency, shall coordinate a review process to ensure the orderly evaluation of a Joint Permit Application that qualifies for fast-track review. The review process shall be completed by all agencies that have been asked to comment within 45 days of VMRC notifying the agency of the Joint Permit Application.

F. Any property owner adjacent to or within 200 feet of the disposal site shall be identified in the Joint Permit Application, and VMRC shall notify such property owners of the proposed project and provide an opportunity for comment.

G. VMRC shall issue a public notice for any dredge or dredge material placement project requiring public notice under 4VAC20-120-10.

H. A wetlands or sand dunes and beaches permit will not be required for any use authorized under subdivision 3 of § 28.2-1302 or subdivision 3 of § 28.2-1403 of the Code of Virginia.

I. When a wetlands or sand dunes and beaches permit is required, VMRC will not make a decision on the Joint Permit Application until receiving proof that a wetlands or sand dunes and beaches permit has been issued by the appropriate authority pursuant to § 28.2-1302 or 28.2-1403 of the Code of Virginia. After receiving such proof, or after receipt of a complete application if no wetlands or sand dunes and beaches permit is required, VMRC shall make a decision on the Joint Permit Application no more than 90 days thereafter to the extent practicable.

J. If an objection to a Joint Permit Application is filed with VMRC, VMRC shall allow 90 days from completion of the application to attempt to resolve the objection. If resolution cannot be achieved, VMRC shall consider the Joint Permit Application at a public hearing no later than 30 days after the time for resolution has ended or as soon as practicable.

4VAC20-1340-40. Fast-track limitations.

A. Fast-track permitting shall not apply under the following conditions:

1. Placement of dredged material on SAV beds or where the dredged material will flow onto SAV beds.

2. Placement of dredged material on any oyster planting ground lease without written consent by the lessee.

3. Placement of dredged material, excluding sand, within 1,500 feet of an oyster planting ground lease without written consent by the lessee.

4. Placement of dredged material on sanctuary oyster reefs; natural oyster beds, rocks, or shoals; or where the dredged material will flow onto sanctuary oyster reefs or natural oyster beds, rocks, or shoals.

B. When dredged material is to be placed on shorelines not owned by the local government or political subdivision

conducting the dredging, the local government or political subdivision must have a suitable property interest or written permission from the landowner to place dredging material on that property for any single dredging event and subsequent maintenance dredging.

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 (4VAC20-1340)

Standard Joint Permit Application (rev. 9/2018)

VA.R. Doc. No. R19-6025; Filed May 29, 2019, 11:36 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Fast-Track Regulation

Titles of Regulations: **4VAC25-31. Reclamation Regulations for Mineral Mining (amending 4VAC25-31-120, 4VAC25-31-130, 4VAC25-31-170, 4VAC25-31-240, 4VAC25-31-360, 4VAC25-31-405 through 4VAC25-31-450).**

4VAC25-40. Safety and Health Regulations for Mineral Mining (amending 4VAC25-40-670).

Statutory Authority: §§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia (4VAC25-31-120, 4VAC25-31-130, 4VAC25-31-170, 4VAC25-31-240, 4VAC25-31-360, 4VAC25-31-405, 4VAC25-31-410, 4VAC25-31-420, 4VAC25-31-430, 4VAC25-31-440, 4VAC25-31-450).

§§ 45.1-161.3, 45.1-161.294, and 45.1-161.305 of the Code of Virginia (4VAC25-40-670).

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 10, 2019.

Effective Date: July 25, 2019.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

Basis: The regulatory authority for the Department of Mines, Minerals and Energy (DMME) for this action is located in §§ 45.1-161.3, 45.1-161.292:19, and 45.1-180.3 of the Code of Virginia.

Purpose: This regulatory change is necessary to clarify and codify longstanding agency policy. This change will result in clearer, more precise requirements that will enhance worker and public safety, as well as environmental protection.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is noncontroversial because it merely makes minor changes and clarifies and codifies longstanding agency policy.

Substance: Substantive changes to existing sections in this regulatory action include specifying requirements for operation and reclamation plans, clarification of permit application notification requirements, clarification of top soil requirements for reclamation, clarification of temporary cessation conditions, and the addition of a standard for fire extinguishers on mineral mine sites. Other changes clarify existing agency policy.

Issues: The public, DMME, and the regulated community will all benefit from regulatory requirements that codify and clarify longstanding agency policy. These changes will result in enhanced environmental protection and public and worker health and safety. There are no known disadvantages to the public or the Commonwealth.

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

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to a periodic review,[1] the Department of Mines, Minerals and Energy (DMME) proposes to 1) require mine operators to cover on-site generated mine waste used as a fill by an "adequate" cover instead of requiring coverage by four inches of top soil, 2) require operators to send a copy of the permit notification to DMME at the time they are mailed to those who must be noticed, and 3) make changes to clarify numerous other requirements or delete redundant language.

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

Estimated Economic Impact. One of the proposed substantive changes is requiring mine operators to cover mine waste used as a fill by "adequate" cover as opposed to requiring four inches of top soil cover in every case for reclamation purposes. According to DMME, using mine waste as fill is a site-specific exercise that should not be regulated in a one-size-fits-all fashion. This change would provide greater flexibility to the mine operators in terms of choosing the type and the amount of cover. The proposed change is essentially replacing a prescriptive criterion by a performance criterion. Generally, performance criteria lead to better allocation of scarce resources with proper enforcement. While some operators may incur greater cost to provide "adequate" cover than the cost of four inches of top soil cover and in other

cases may incur less, this change should help prevent unnecessary use of cover material overall. Under the proposed change, only the just right type and amount of cover would be required while maintaining "adequate" cover. DMME notes however, any savings or costs from this change would be minor, but is unable to quantify the likely magnitude as it depends on the site, the materials, frequency of the work, etc.

Another proposed change would require operators to send a copy of a permit notification to DMME at the time they are mailed to those who must be noticed. According to DMME, this will serve as a heads up to the agency that it will soon receive a permit application and may increase efficiency. The cost of this change would be sending an additional copy of an already existing notice to DMME, which should be very small.

The remaining changes include numerous clarifications of long-standing agency practices and removal of fees set by statute from this regulation. These changes are not expected to create any significant economic impact beyond improving the clarity of the requirements and language.

Businesses and Entities Affected. According to DMME, there are approximately 440 permitted mineral mine sites operated by 278 entities across the Commonwealth. Approximately 90% of these operators would qualify as small business.

Localities Particularly Affected. The proposed amendments would affect all localities in the Commonwealth that have mineral mines. According to DMME, 91% of Virginia's counties have mineral mines governed by these regulations.

Projected Impact on Employment. The proposed amendments may increase or decrease demand for labor at different sites by a small margin depending on whether adequate coverage can be achieved by more or less coverage than the currently required four inches of top soil.

Effects on the Use and Value of Private Property. The proposed amendments could have a positive or negative impact on the asset values of the affected operators by a small margin depending on whether their site-specific compliance costs increase or decrease.

Real Estate Development Costs. The proposed amendments should 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 costs and other impact on mine operators that are small businesses are the same as discussed above.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that would minimize the likely small adverse impact in some cases while accomplishing the same goals.

Adverse Impacts:

Businesses. The likely small adverse impact for some mine operators will depend on the specific site conditions as discussed above.

Localities. The proposed amendments would not adversely affect localities.

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

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[1]http://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1678

Agency's Response to Economic Impact Analysis: The Department of Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

The amendments update reclamation requirements for mineral mining to clarify and codify longstanding agency policy. Additionally, one minor technical amendment is being made to the mineral mining safety and health regulations to correct an omission.

4VAC25-31-120. Permit fee and bond.

A. ~~The following permit fees shall be submitted upon receipt of a billing notice from the director and before the permit is issued:~~

~~1. A fee of $31 per acre for the total permitted acres shall be submitted for the initial permit application.~~

~~2. A fee of $16 per acre for the land permitted by the total operation shall be paid to transfer the permit when one operator succeeds another on an uncompleted operation.~~ Permit fees for the initial permit application and permit renewal shall be submitted upon receipt of a billing notice from the director and before the permit is issued or renewed. Fees shall be paid in accordance with § 45.1-181 of the Code of Virginia.

B. Permit fees for the transfer of a mine permit shall be submitted upon receipt of a billing notice from the director and before the transferred permit is issued. Fees shall be paid in accordance with § 45.1-184.2 of the Code of Virginia.

C. All fees shall be in the form of cash, check, money order, or other form of payment acceptable to the director.

~~C.~~ D. A bond is required as set forth in Part III of this regulation. Bonding shall be provided once the permit application is deemed complete.

4VAC25-31-130. Mineral mining plans.

Mineral mining plans shall be attached to the application and consist of the following:

1. The operation plan shall include a description of the proposed method of mining and processing; the location of top soil storage areas; overburden, refuse, and waste disposal areas; stockpiles, equipment storage, and maintenance areas; cut and fill slopes; and roadways. The operation plan shall address plans for the storage and disposal of scrap metal, scrap tires, used lubricants, coolants, and other equipment service products, batteries, process chemicals, trash, debris, and other hazardous materials. The operation plan shall also include all related design and construction data. The method of operation shall provide for the conducting of reclamation simultaneously where practicable with the mining operation. For the impoundments that meet the criteria of § 45.1-225.1 A of the Code of Virginia, plans shall be provided as required under 4VAC-25-31-180 and 4VAC25-31-500.

2. The drainage plan shall consist of a description of the drainage system to be constructed before, during, and after mining~~,~~; a map or overlay showing the natural drainage system~~,~~; and all sediment and drainage control structures to be installed along with all related design and construction data.

3. The reclamation plan shall include a statement of the planned land use to which the disturbed land will be returned through reclamation, the proposed actions to assure suitable reclamation, and a time schedule for reclamation. The method of grading~~,~~; removal of metal, lumber, and debris, including processing equipment~~,~~; buildings~~,~~; and other equipment relative to the mining operation and revegetation of the disturbed area shall be specified. Reclamation plans for underground mines shall include plans for closing or securing all entrances to underground workings.

4. Adequate maps, plans and cross sections, and construction specifications shall be submitted to demonstrate compliance with the performance standards of Part IV (4VAC25-31-330 et seq.) of this chapter and Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia. Designs, unless otherwise specified, shall be prepared by a qualified person, using accepted engineering design standards and specifications.

5. A copy of the Virginia Department of Transportation land use permit for roads that connect to public roads.

6. If mining below the water table is to take place, the following conditions apply:

a. The application shall contain an assessment of the potential for impact on the overall hydrologic balance from the proposed operations to be conducted within the permitted area for review and approval.

b. A plan for the minimization of adverse effects on water quality or quantity shall be prepared based on the assessment in subdivision 6 a of this section and included in the application.

c. Permanent lakes or ponds created by mining shall be equal to or greater than four feet deep or otherwise constructed in a manner acceptable to the director.

4VAC25-31-170. Permit application notifications.

A. The applicant shall notify the following ~~shall be made with~~ parties of a new permit application via certified mail:

1. ~~Notification to property~~ Property owners within 1,000 feet of the permit boundary ~~by certified mail. A record shall be kept of:~~

~~a. The names and addresses of those notified, and~~

~~b. The certified mail return receipts used for the notification~~.

2. ~~A statement as required by § 45.1-184.1 of the Code of Virginia to property owners that requires land owners within 1,000 feet of the permit boundary to be notified that the operator is seeking a surface mining and reclamation permit from the Department of Mines, Minerals and Energy. The statement shall also include:~~

~~a. Company name;~~

~~b. Date;~~

~~c. Location;~~

~~d. Distance and direction of nearest town or other easily identified landmark;~~

~~e. City or county;~~

~~f. Tax map identification number; and~~

~~g. Requirements for (i) regrading; (ii) revegetation; and (iii) erosion controls of mineral mine sites.~~

~~h. A notice that informs property owners that they have 10 days from receipt of the permit notification to specify written objections or request a hearing. This request shall be in writing and shall be sent to the Department of Mines, Minerals and Energy, Division of Mineral Mining.~~ The Chief Administrative Official of the local political subdivision where the prospective mining operation would take place.

3. All public utilities on or within 500 feet of permit boundary.

B. ~~Applicants will provide a copy of the permit notification to the division at the time they are mailed to the neighboring landowners.~~ All notifications shall contain:

1. The name of the permit applicant issuing notice and the date of notification;

2. The permit applicant's address, phone number, and other contact information as available;

3. The name and address of the property owner, chief administrative official, or utility receiving the notification;

4. A statement as required by § 45.1-184.1 of the Code of Virginia to property owners that requires land owners within 1,000 feet of the permit boundary to be notified that the operator is seeking a mining and reclamation permit from the Department of Mines, Minerals and Energy. The statement shall also note that the mining permit must address department requirements for regrading, revegetation, and erosion controls of mineral mine sites;

5. The location of the proposed mine, the city or county in which it is located, the distance of the nearest town or other easily identified landmark, and the tax map identification number of the parcels to be permitted; and

6. A notice that informs property owners within 1,000 feet of the permit boundary that they have 10 days from receipt of the permit notification to specify written objections or request a hearing. This request shall be in writing and shall be sent to the division. The current address for the division shall be provided on the notification.

~~C. A statement, with certified mail receipt, certifying that the chief administrative official of the local political subdivision has been notified.~~

~~D. Notification shall be made to any public utilities on or within 500 feet of the permitted area. The notification shall consist of the following:~~

~~1. The name of the party issuing the notice;~~

~~2. The applicant name, address, and phone number; and~~

~~3. The name and address of the party receiving the notice and the information noted in subdivision A 2 of this section.~~

~~E.~~ C. No permit will be issued until at least 15 days after receipt of the application by the division. If all persons required to receive notice have issued a statement of no objection, the permit may be issued in less than 15 days.

~~F.~~ D. Copies of all permit notifications ~~and statements required in subsections A through D of this section~~ shall be ~~supplied~~ submitted to the division ~~with the application~~ at the time they are mailed to the parties identified in subsection A of this section.

E. Documentation of certified mail receipts of the notifications described in this section shall be included with the permit application.

4VAC25-31-240. Bond amount.

A. ~~The amount of bond shall be $1,000 per acre of disturbed land~~ Bond shall be set in accordance with § 45.1-183 of the Code of Virginia.

B. The minimum bond for a mineral mining permit shall be ~~$1,000~~ $3,000, except for restricted permits and Minerals Reclamation Fund participants.

4VAC25-31-360. Operation and reclamation.

A. Mining operations shall be conducted to minimize adverse effects on the environment and facilitate integration of reclamation with mining operations according to the special requirements of individual mineral types and the approved operation, drainage, and reclamation plans. Mining shall be conducted to minimize the acreage that is disturbed, and reclamation shall be conducted simultaneously with mining to the extent feasible.

B. Open pit mining of unconsolidated material shall be performed in such a way that extraction and reclamation are conducted simultaneously.

C. Mining activities shall be conducted so that the impact on water quality and quantity are minimized. Mining below the water table shall be done in accordance with the mining plan under 4VAC25-31-130.

D. Permanent lakes or ponds created by mining shall be equal to or greater than four feet deep, or otherwise constructed in a manner acceptable to the director.

E. Excavation shall be done in such a manner as to keep storm drainage flowing toward sediment control structures. Diversions shall be used to minimize storm ~~run-off~~ runoff over disturbed areas.

F. The mining operation shall be planned to enhance the appearance to the public during mining and to achieve simultaneous and final reclamation.

G. At the completion of mining, all entrances to underground mines shall be closed or secured and the surface area reclaimed in accordance with the mineral mining plan.

H. Reclamation shall be completed to allow the post-mining land use to be implemented. After reclamation, the post mining land use shall be achievable and compatible with surrounding land use. All necessary permits and approvals for the post-mining land use shall be obtained prior to implementation.

4VAC25-31-405. Disposal of waste.

On-site generated mine waste shall not be disposed of within the permitted mine area without prior approval. On-site generated ~~inert materials are~~ mine waste is approved for use as fill on the mining site provided they are capped with ~~a minimum of four feet of soil~~ an adequate cover and seeding is established per the approved reclamation plan. Off-site

generated inert waste shall not be brought onto the mine permitted area or disposed of on the mine permitted area without prior approval.

4VAC25-31-410. Storage of top soil.

A. Top soil required for reclamation shall be stored with a maximum slope of 2:1 and in such a manner as to remain available for reclamation. The operator shall retain a minimum quantity sufficient to cover all disturbed areas to be reclaimed with six inches of top soil or as specified in an approved operations plan. Top soil will be needed for future reclamation and shall not be removed from the permitted area unless authorized by the division.

B. The stockpiled top soil shall be seeded with quick growing grasses or legumes for stabilization until used in final reclamation.

C. The provisions of this section shall not apply to sand and gravel operations in the Coastal Plain physiographic province.

4VAC25-31-420. Screening.

A. Screening shall be provided for sound absorption and to improve the appearance of the mining site from public roads, public buildings, recreation areas, and occupied dwellings.

B. If screening is to be undisturbed forest, a distance of 100 feet must be left undisturbed within the permit boundary. Less than 100 feet may be approved if the natural vegetation provides the needed screening benefits between the mining operation and the adjacent property. Planted earth berms, tree plantings, natural topography, or appropriately designed fences or walls may be used if approved in the mineral mining plan.

C. On permanent berms for screening, the spoils ~~(waste materials)~~ shall be initially placed on the proposed berm area, and top soil ~~(where available)~~ shall be spread over the ~~spoil areas~~ berm, not less than six inches in thickness, and if possible, 12 inches in thickness. The remaining top soil shall be placed in a designated area for future spreading on other areas ~~which~~ that need top dressing. The ~~top soil~~ screening berm shall be seeded or planted in accordance with the approved reclamation plan.

4VAC25-31-430. Completion of active mining.

A. Except as provided in subsection B of this section and with the director's approval, a mining operation~~,~~ where no mineral has been removed or overburden removed or regraded, or where no substantial mine-related activity has been conducted for a period of 12 consecutive months~~,~~ shall be declared complete, and total reclamation shall begin.

B. At the option of the operator and with the director's ~~concurrence~~ approval, an operation may remain under permit for an indefinite period during which no mineral or overburden is removed if the following conditions are met to the director's satisfaction:

1. All disturbed areas are reclaimed ~~to prevent erosion and sedimentation~~ or adequately stabilized, or all erosion and sediment control systems are maintained in accordance with mining plans and proper engineering practices.

2. All drainage structures ~~such as culverts and ditches~~ are constructed and maintained in accordance with mining plans and proper engineering practices.

3. All vegetation is maintained, including reseeding if necessary.

4. All improvements on site, including machinery and equipment, are maintained in a state of good repair and condition.

If the ~~above~~ conditions listed in this subsection are not met, the permit may be revoked by the director in accordance with § 45.1-186.1 of the Code of Virginia.

4VAC25-31-440. Drainage and sediment control.

All mining operations shall have adequate drainage, erosion, and sediment control measures installed and maintained in accordance with the approved drainage plan or as acceptable to the division. Drainage from disturbed areas shall be directed into a sediment control structure before it is discharged from the permitted area. If adequate drainage, erosion, and sediment control measures cannot be provided, the permit for the affected portion or the entire mine may be denied.

4VAC25-31-450. Sediment basins.

~~Drainage from disturbed areas shall be directed into a sediment basin before it is discharged from the permit area.~~ Sediment basins shall be located as close to the disturbed area as possible. Sediment basins shall not be located in perennial streams. Sediment control measures shall be installed prior to land disturbing activities within the drainage area controlled by the sediment basin. Each primary sediment basin shall provide at least 0.125 acre feet of storage capacity for each acre of disturbed land draining to it. Storage basins shall be cleaned as necessary to ensure proper functioning before they reach 60% capacity. Alternate sediment control measures that are as effective as sediment basins may be approved. The measures may include reduced basin storage capacity for small short-term disturbances, sediment channels, check dams, or mining methods that incorporate sediment control.

4VAC25-40-670. Fire extinguishers.

A. Whenever a fire or its effects could impede escape from self-propelled equipment, a fire extinguisher shall be on the equipment.

B. Whenever a fire or its effects would not impede escape from the equipment but could affect the escape of other persons in the area, a fire extinguisher shall be on the equipment or within 100 feet of the equipment.

C. All fire extinguishers required by this chapter shall meet the current standards established by the National Fire Prevention Association.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC25-40)

1996 Threshold Limit Values and Biological Exposure Indices published by the American Conference of Governmental Industrial Hygienists

American Table of Distances, 1991 edition, published by the Institute of Makers of Explosives

National Electrical Code, 2008 edition, published by the National Fire Protection Association

National Fire Protection Association 10: Standard for Portable Fire Extinguishers, 2013 edition

Bureau of Mines Instruction Guide 19, Mine Emergency Training, U.S. Department of Labor, 1972 edition

Blasting Guidance Manual, U.S. Department of Interior, Office of Surface Mining Reclamation and Enforcement, 1987 edition

The American National Standard for Wire Rope for Miners, M11.11980, published by the American National Standards Institute

VA.R. Doc. No. R19-5638; Filed May 17, 2019, 8:19 a.m.

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: **4VAC25-35. Certification Requirements for Mineral Miners.**

Contact Information: Larry Corkey, Energy and Regulatory Manager, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3239, or email larry.corkey@dmme.virginia.gov.

FORMS (4VAC25-35)

~~Application for Certification Examination, DMM-BMME-1 (rev. 8/12).~~

~~Application for Renewal Mineral Mining, DMM-BMME-3 (rev. 8/12).~~

~~Verification of Work Experience Form Mineral Mining, DMM-BMME-2 (rev. 8/12).~~

Application for Certification Examination, DMM-BMME-1 (rev. 3/2017)

Application for Renewal, DMM-BMME-3 (rev. 3/2017)

Verification of Work Experience Form, DMM-BMME-2 (rev. 3/2017)

VA.R. Doc. No. R19-6012; Filed May 14, 2019, 2:50 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Final Regulation

REGISTRAR'S NOTICE: The Department of Criminal Justice Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 26 of the Code of Virginia, which exempts the department when developing, issuing, or revising any training standards established by the Criminal Justice Services Board under § 9.1-102 of the Code of Virginia, provided such actions are authorized by the Governor in the interest of public safety.

Titles of Regulations: **6VAC20-20. Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Officers (amending 6VAC20-20-10, 6VAC20-20-21 through 6VAC20-20-40, 6VAC20-20-70, 6VAC20-20-80, 6VAC20-20-90; adding 6VAC20-20-120, 6VAC20-20-130; repealing 6VAC20-20-20, 6VAC20-20-50, 6VAC20-20-61).**

6VAC20-50. Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service Officers (amending 6VAC20-50-10 through 6VAC20-50-40, 6VAC20-50-70, 6VAC20-50-80, 6VAC20-50-90; adding 6VAC20-50-120, 6VAC20-50-130; repealing 6VAC20-50-50, 6VAC20-50-60).

6VAC20-60. Rules Relating to Compulsory Minimum Training Standards for Dispatchers (amending 6VAC20-60-10 through 6VAC20-60-40, 6VAC20-60-70, 6VAC20-60-80, 6VAC20-60-90; adding 6VAC20-60-95; repealing 6VAC20-60-50, 6VAC20-60-60).

6VAC20-90. Rules Relating to Regional Criminal Justice Training Academies (amending 6VAC20-90-10 through 6VAC20-90-40; adding 6VAC20-90-60 through 6VAC20-90-130).

6VAC20-100. Rules Relating to Compulsory Minimum Training Standards for Correctional Officers of the Department of Corrections, Division of Adult Institutions (amending 6VAC20-100-10 through 6VAC20-100-40, 6VAC20-100-70, 6VAC20-100-80, 6VAC20-100-90; adding 6VAC20-100-25; repealing 6VAC20-100-50, 6VAC20-100-60, 6VAC20-100-100, 6VAC20-100-110).

Statutory Authority: § 9.1-102 of the Code of Virginia.

Effective Date: July 1, 2019.

Agency Contact: Laureen Hyman, Executive Administrative Assistant to the Director, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-8718, or email laureen.hyman@dcjs.virginia.gov.

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

Summary:

The amendments to all chapters (i) separate agency responsibility and academy responsibility; (ii) codify Department of Criminal Justice Services practice and policy; (iii) clarify that training extensions will not be granted for failing to pass or meet compulsory minimum training standards and requirements; and (iv) correct and update Code of Virginia citations and address inconsistent terminology, definitions, and processes.

Additionally, amendments to 6VAC20-90 (i) provide training academies clear instructions on the requirements for certification and recertification; (ii) codify the current department policy and practice, which requires academies meet 100% of the certification standards identified in the Certified Criminal Justice Training Academy Certification Checklist and Report for initial certification and the Certified Criminal Justice Training Academy Recertification Checklist and Report for recertification; (iii) describe the process, responsibilities, and timeline for reassessment and the application of enforcement actions, including probation, suspension, and revocation, in detail; (iv) describe the appeal process, including an initial appeal to the director of the department and a second opportunity to appeal to the Executive Committee of the Criminal Justice Services Board; and (v) identify the process for creating a regional academy, those regional academies eligible to receive state funding, and the department's ability to suspend or revoke the certification of a certified training academy.

At the final stage of this regulatory action, the board did not adopt the proposed changes to 6VAC20-70, Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections.

6VAC20-20-10. Definitions.

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

"Academy director" means the chief administrative officer of a certified [criminal justice] training academy.

"Agency administrator" means any chief of police, sheriff, or agency head of a state or local law-enforcement agency.

"Approved training" means training approved by the department to meet minimum training standards.

"Board" means the Criminal Justice Services Board.

"Certified [criminal justice] training academy" means a training facility [or campus] in compliance with academy certification or recertification standards operated by the state or local [units ~~unit~~] of government that is owned, leased, rented, or used exclusively for the purpose of ~~providing instruction of compulsory minimum training standards~~ training criminal justice professionals regulated by the department and board. [Approved firing ranges, driving tracks, and defensive tactics training rooms are considered part of the academy facility, subject to review during academy certification and recertification.]

"Committee on Training" or "COT" means the standing committee of the board that is charged with reviewing proposed changes to the standards, receiving and reviewing public comments, and approving changes to the standards as needed.

"Compulsory minimum training standards" means the written performance outcomes approved by the Committee on Training and the minimum [training] hours approved by the Criminal Justice Services Board.

"Curriculum Review Committee" or "CRC" means the committee consisting of nine individuals representing the certified [criminal justice training] academies. Four members of the committee shall represent regional criminal justice [training] academies, four members of the committee shall represent independent criminal justice [training] academies, and one member shall represent the Department of State Police Training Academy. The Committee on Training shall appoint members of the Curriculum Review Committee.

"Department" means the Department of Criminal Justice Services.

["Designee" means one who acts with the authority of the chief executive of the agency.]

"Director" means the chief administrative officer of the department or ~~his~~ the director's designee.

["External training location" means a training location approved by the department located away from the certified criminal justice training academy, which the certified criminal justice training academy uses to conduct mandated training using full-time and part-time academy staff with general instructorships.]

"Requirements" means the core elements an officer needs to accomplish to obtain law-enforcement certification.

6VAC20-20-20. ~~Compulsory minimum training standards.~~ (Repealed.)

~~Pursuant to the provisions of subdivision 2 of § 9-170 of the Code of Virginia, the department establishes these standards for compulsory minimum training for full-time and part-time law-enforcement officers.~~

6VAC20-20-21. ~~Performance outcomes and minimum hours required~~ Compulsory minimum training standards and requirements.

A. Pursuant to the provisions of subdivision 2 of § 9.1-102 of the Code of Virginia, the department under the direction of the board establishes the ~~standards for Compulsory Minimum Training Standards for Law Enforcement Officers. The complete document may be found on the Department of Criminal Justice Services' website at http://www.dcjs.virginia.gov~~ compulsory minimum training [standards] for full-time and part-time law-enforcement officers.

~~B. Academy training.~~

~~1. Category 1 - Professionalism~~

~~2. Category 2 - Legal Issues~~

~~3. Category 3 - Communications~~

~~4. Category 4 - Patrol~~

~~5. Category 5 - Investigations~~

~~6. Category 6 - Defensive Tactics/Use of Force~~

~~7. Category 7 - Weapons Use~~

~~8. Category 8 - Driver Training~~

~~9. Category 9 - Physical Training (Optional)~~

~~ACADEMY TRAINING HOURS - 480 (excluding Category 9)~~

~~C. Field training.~~

~~Category 10 - Field Training~~

~~FIELD TRAINING HOURS - 100~~

~~TOTAL MINIMUM TRAINING STANDARDS HOURS - 580 (excluding Category 9)~~

B. An individual hired as a law-enforcement officer as defined in § 9.1-101 of the Code of Virginia shall comply with the following law-enforcement certification requirements:

1. Successfully complete law-enforcement basic training at a certified [criminal justice] training academy, which includes receiving a minimum of 480 hours of department approved training in the following categories:

a. Professionalism,

b. Legal,

c. Communication,

d. Patrol,

e. Investigations,

f. Defensive tactics and use of force,

g. Weapons, and

h. Driver training.

2. Successfully complete a minimum of 100 hours of approved training in the category of field training by meeting or exceeding the field training performance outcomes identified in the Virginia Department of Criminal Justice Services Field Training and On the Job Training Performance Outcomes.

C. Law-enforcement officers become certified upon meeting all compulsory minimum training standards and [other] requirements that include documented completion of all performance outcomes, the law enforcement certification exam, and field training.

6VAC20-20-25. Approval authority.

A. The ~~Criminal Justice Services Board~~ board shall be the approval authority for the training categories and hours of the compulsory minimum training standards identified in 6VAC20-20-21. Amendments to training categories and hours shall be made in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Committee on Training (COT) [~~of the~~] ~~Criminal Justice Services Board~~ [~~board~~] shall be the approval authority for the performance outcomes, training objectives, criteria, and lesson plan guides that support the performance outcomes.

1. Performance outcomes, training objectives, criteria, and lesson plan guides supporting the compulsory minimum training standards may be added, deleted, or amended by the ~~Committee on Training~~ COT based ~~upon~~ on written recommendation of a chief of police, sheriff, agency administrator, academy director, Curriculum Review Committee (CRC), ~~an~~ interested party, or member of the community.

~~Any suggestions~~ 2. Suggestions received related to performance outcomes, training objectives, criteria, and lesson plan guides shall be reviewed ~~at the regularly scheduled meeting of the Curriculum Review Committee. If comment is received at any public hearing, the Committee on Training may make a decision at that time. Changes to the hours and training categories will only be made in accordance with the provisions of the Administrative Process Act~~ by the CRC. The CRC shall present recommendations for revisions to the COT.

C. ~~Prior to~~ Before approving changes to the performance outcomes, training objectives, criteria, or lesson plan guides, the ~~Committee on Training~~ COT shall ~~conduct a public hearing~~ schedule an opportunity for public comment during a meeting of the COT. ~~Sixty~~ A minimum of 60 days ~~prior to~~ before the ~~public hearing~~ meeting of the COT, the proposed changes shall be distributed to all ~~affected parties~~ certified [criminal justice] training academies for the opportunity to comment. Notice of ~~change of~~ changes to the performance outcomes, training objectives, criteria, and lesson plan guides shall be filed for publication in the Virginia Register of Regulations ~~upon adoption, change, or deletion~~.

D. The department shall notify each certified [criminal justice] training academy in writing of any ~~new, revised, or deleted objectives. Such adoptions, changes, or deletions shall become effective 30 days after notice of publication in the Virginia Register~~ COT approved revisions. COT approved revisions require a minimum of 30 days' notice to certified [criminal justice] training academies prior to becoming effective.

6VAC20-20-30. Applicability.

A. ~~Every~~ A person employed as a full-time or part-time law-enforcement officer, as defined by ~~§ 9-169 (9)~~ § 9.1-101 of the Code of Virginia, ~~subsequent to~~ after July 1, 1971, shall satisfactorily complete the compulsory minimum training standards and the requirements for law-enforcement officers as identified in 6VAC20-20-21 and 6VAC20-20-40.

B. The director may grant an exemption or partial exemption from the compulsory minimum training standards and the requirements set forth in 6VAC20-20-21 to a law-enforcement officer of ~~any~~ a political subdivision of the Commonwealth who has had previous experience and training as provided in ~~§ 9-173~~ § 9.1-116 of the Code of Virginia.

C. ~~Any~~ A person not employed as a full-time or part-time law-enforcement officer on July 1, 1971, who remains out of ~~law enforcement~~ law enforcement for more than 24 months, upon reappointment as a full-time or part-time law-enforcement officer, shall be required to comply with the compulsory minimum training standards and the requirements identified in 6VAC20-20-21 unless provided otherwise in accordance with subsection B of this section.

6VAC20-20-40. Time requirement for completion of training.

A. ~~Every law enforcement officer who is~~ Law-enforcement officers required to comply with the ~~compulsory minimum training standards~~ requirements of 6VAC20-20-21 shall satisfactorily complete ~~such training~~ the requirements within 12 months of the date of hire or appointment as a law-enforcement officer.

B. The director, or ~~his~~ the director's designee, may grant an extension of the time limit for completion of the compulsory minimum training standards ~~under the following conditions~~ and [other] requirements for the following reasons:

1. ~~Illness~~ Medical condition;

2. Injury;

3. Military service; or

~~4. Special duty assignment required and performed in the public interest;~~

[~~5.~~ 4.] Administrative leave involving the determination of worker's compensation or disability retirement issues~~,~~ ~~full-time educational leave~~ or suspension pending investigation or adjudication of a crime~~; or~~.

~~6. Any other reason documented by the agency administrator. Such reason shall be specified and~~

C. The director or the director's designee may review and consider other reasons (e.g., natural disaster, family medical leave, etc.) for granting an extension. If approval is granted [,] the extension shall not exceed 90 days.

D. [The director or the director's designee may review and consider requests to renew training extensions if the reason for the original training extension continues and the request occurs before the expiration of the original extension.

E.] The director shall not grant an extension for:

1. Failing to pass compulsory minimum training standards and requirements within specified time limits.

2. Failing the certification examination.

[~~E.~~ F.] The agency administrator may request an extension from the director or the director's designee.

1. The request shall be in writing and include written documentation articulating the reason the individual is unable to complete the required training within the specified time limits.

2. The request shall be submitted to the department before the expiration of the specified time limits.

~~C.~~ [~~F.~~ G.] Law-enforcement officers who do not satisfactorily complete compulsory minimum training standards [, field training,] and [other] requirements within 12 months of ~~employment~~ hire or appointment as a law-enforcement officer, or who do not receive an extension of the time limit for completion of ~~training~~ the requirements, shall be subject to the provisions of ~~§ 9-181~~ § 9.1-115 of the Code of Virginia.

[~~G.~~ H.] The department shall notify the agency administrator of ~~any officer~~ individuals not in compliance with the requirements of this section.

6VAC20-20-50. ~~Compliance with compulsory minimum training standards.~~ (Repealed.)

~~A. The compulsory minimum training standards shall be accomplished by satisfactory completion of the academy training objectives and criteria at a certified training academy and the successful completion of field training objectives unless otherwise provided by 6VAC20-20-30 B.~~

~~B. Officers attending approved training are required to attend all classes and shall not be placed on duty or call except in cases of emergency.~~

6VAC20-20-61. ~~Certified training academies.~~ (Repealed.)

~~A. To become a certified academy, a state or local unit of government must demonstrate a need which contains the following elements:~~

~~1. The inability to obtain adequate training from existing academies or a sufficient hardship which renders the use of other existing academies impractical.~~

~~2. Based upon a training needs assessment, a sufficient number of officers to warrant the establishment of a full-time training function for a minimum of five years.~~

~~B. In addition, the state or local unit of government must make the following commitments:~~

~~1. The provision of a full range of training to include entry-level training, in-service training, recertification training, specialized training and instructor certification.~~

~~2. The assignment of one position with primary responsibility as academy director and one clerical position to support training and training-related functions.~~

~~3. The maintenance of a training facility adequate to conduct training in accordance with academy certification standards.~~

~~4. The commitment of sufficient funding to adequately support the training function.~~

~~C. Process.~~

~~1. The state or local governmental unit shall submit a justification to the Committee on Training as described in subsection B of this section. The Committee on Training shall review the justification and make a recommendation to the department as to whether the establishment of an academy is warranted.~~

~~2. If the Committee on Training recommends the establishment of the proposed academy, the department shall make a determination as to whether the establishment of the academy is warranted.~~

~~3. If the establishment of the academy is approved by the department, the proposed academy must successfully complete the academy certification process.~~

~~D. The certified training academy shall submit to the department its curriculum and other information as designated within time limitations established by the department.~~

~~E. Each academy director shall maintain a file of all current lesson plans and supporting material for training objectives and shall provide this information to the director upon request.~~

~~F. A certified training academy is subject to inspection and review by the director or his staff.~~

~~G. The department may suspend or revoke the certification of any certified training academy upon written notice, which shall contain the reason or reasons upon which the suspension or revocation is based, to the academy's director. The academy's director may request a hearing before the director. The request shall be in writing and shall be received by the department within 15 days of the date of the notice of the suspension or revocation. The academy's director may appeal the director's decision to the board.~~

6VAC20-20-70. ~~Grading~~ Attendance, testing, and grading.

A. ~~All certified training academies shall utilize testing procedures which indicate that every officer has satisfactorily completed the criteria in each training objective approved by the Committee on Training of the Criminal Justice Services Board.~~ Attendance.

1. Officers attending approved training are required to attend all classes and shall not be placed on duty or on call except in cases of an emergency. If there is an emergency (e.g., natural disaster, catastrophic event, etc.) the agency administrator or designee shall determine if it is appropriate to place officers on duty or on call and shall advise the academy director within 24 hours.

2. Officers shall be responsible for any material missed during an excused absence.

B. Academy testing.

1. Officers shall comply with the requirements of subdivision B 1 of 6VAC20-20-21.

2. Each officer shall meet all the training objectives and pass each criteria for testing related to every performance outcome approved by the COT.

3. An officer may be tested and retested ~~as may be necessary~~ within the time limits of 6VAC20-20-40 and in accordance with ~~each~~ the certified [criminal justice] training academy's written policy.

~~B. Certified training academies shall maintain accurate records of all tests, grades and testing procedures. Academy training records must be maintained in accordance with the provisions of these rules and §§ 42.1-76 through 42.1-91 of the Code of Virginia.~~

C. Law-enforcement certification exam. Upon documented compliance with the compulsory minimum training standards identified in subdivision B 1 of 6VAC20-20-21 officers will be eligible to complete the law-enforcement certification exam.

6VAC20-20-80. Failure to comply with rules and regulations.

A. Any individual attending a certified [criminal justice] training academy shall comply with the rules and regulations promulgated by the department. The academy director shall be responsible for enforcement of all rules and regulations established to govern the conduct of attendees.

~~If the academy director considers a violation of~~ B. Individuals violating the rules and regulations governing the certified [criminal justice] training academy determined to be detrimental to the welfare of the certified [criminal justice] training academy~~, the academy director may expel the individual~~ or the safety of officers, visitors, or personnel may be expelled from the academy.

C. Notification of ~~such action shall~~ an expulsion will immediately be reported, in writing, to the agency administrator of the individual ~~in accordance with the rules and regulations within the authority of the certified training academy~~ and the department.

6VAC20-20-90. Administrative requirements.

A. ~~Reports will be required from the agency administrator and academy director on forms approved by the department and at such times as designated by the director. [Law-enforcement agencies will receive a roster containing the names of those officers who have satisfactorily completed the compulsory minimum training standards within 60 days of completion.~~

~~B.~~] The law-enforcement agency shall complete the department authorized field training completion form (Form B-13) documenting the completion of field training for officers.

[~~C.~~ B. Field training shall be completed in accordance with the requirements in 6VAC20-20-40.] The agency administrator shall ~~forward a properly executed field training form~~ sign and submit the field training completion form to the department for each officer [~~, within 12 months of employment hire or appointment~~].

~~C. The academy director shall, within 30 days upon completion of approved training, comply with the following:~~

~~1. Submit to the department a roster containing the names of those officers who have satisfactorily completed the compulsory minimum training standards.~~

~~2. Submit to the department the final curriculum with the training objectives, hours and instructor names listed.~~

[~~D.~~ C.] ~~The academy director shall furnish each instructor with the applicable performance outcomes, criteria and lesson plan guides for assigned subject matter.~~ Records and documentation shall be open to audit, inspection, and review by the department upon request.

[~~E.~~ D.] Training records shall be maintained in accordance with the provisions of this chapter and the Virginia Public Records Act (§ 42.1-76 et seq. of the Code of Virginia).

6VAC20-20-120. Certification status and in-service training.

A. All full-time and part-time law-enforcement officers of a police department or sheriff's office that is part of or administered by the Commonwealth or any political division, law-enforcement officers as defined in § 9.1-101 of the Code of Virginia, and all jail officers as defined in § 53.1-1 of the Code of Virginia must be certified through the successful completion of training at [~~an approved~~ a certified] criminal justice training academy in order to remain eligible for appointment or employment.

B. Officers shall comply with in-service training and firearms training requirements identified in 6VAC20-30.

6VAC20-20-130. Certified training academies.

Every criminal justice agency under the purview of the department shall be a member of a certified [criminal justice] training academy.

NOTICE: The following forms used in administering the regulation were 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 (6VAC20-20)

~~Application for Exemption From Virginia Compulsory Minimum Training Standards, Form W-2, eff. 1/91~~

~~Field Training: Law Enforcement, B-13, rev. 1/98~~

~~Criminal Justice Training Roster, Form 41, rev. 4/94~~

[~~Application for Exemption from Virginia Compulsory Minimum Training Standards, Form W-2, (rev. 5/2018)~~]

Field Training: Law Enforcement, B-13, (rev. 5/2018)

DOCUMENTS INCORPORATED BY REFERENCE (6VAC20-20)

Virginia Department of Criminal Justice Services Field Training and On the Job Training Performance Outcomes, published September 2012, Virginia Department of Criminal Justice Services (Revised January 2018)

6VAC20-50-10. Definitions.

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

"Academy director" means the chief administrative officer of a certified [criminal justice] training academy.

"Agency administrator" means any chief of police, sheriff ~~or,~~ agency head of a state or local law-enforcement agency, or agency head of a local correctional facility as defined in § 53.1-1 of the Code of Virginia.

~~"Academy director" means the chief administrative officer of a certified training academy.~~

"Approved training" means training approved by the department to meet minimum training standards.

"Board" means the Criminal Justice Services Board.

"Certified [criminal justice] training academy" means a training facility [or campus] in compliance with academy certification or recertification standards operated by the state or local ~~unit(s)~~ [~~unit~~ units] of government that is owned, leased, rented, or used exclusively for the purpose of ~~providing instruction of compulsory minimum training standards~~ training criminal justice professionals regulated by the department and board. [Approved firing ranges, driving tracks, and defensive tactics training rooms are considered part of the academy facility, subject to review during academy certification and recertification.]

"Committee on Training" or "COT" means the standing committee of the board that is charged with reviewing proposed changes to the standards, ~~holding public hearings~~ receiving and reviewing public comments, and approving changes to the standards as needed.

"Compulsory minimum training standards" means the written performance outcomes, training objectives, criteria for testing, and lesson plan guides approved by the Committee on Training and the minimum [training] hours approved by the board.

"Curriculum Review Committee" or "CRC" means a committee consisting of nine individuals representing the conduct of entry-level jailor or custodial officer, courthouse and courtroom security officer, and process service officer training. The composition of the committee shall be three representatives of sheriffs' offices, three representatives of regional jails, ~~two~~ and three representatives from [criminal justice training] academies~~, and one representative of the Department of Criminal Justice Services Jails Training Unit~~. The Committee on Training shall appoint the members of the Curriculum Review Committee.

"Department" means the Department of Criminal Justice Services.

["Designee" means one who acts with the authority of the chief executive of the agency.]

"Director" means the chief administrative officer of the department or the director's designee.

~~"Full-time attendance" means that officers in training shall attend all classes and shall not be placed on duty or call except in cases of emergency for the duration of the school.~~

~~"School director" means the chief administrative officer of an approved training school.~~

"Requirements" means the core elements a jail officer, deputy sheriff, court security officer, or civil process officer needs to accomplish to obtain department certification.

6VAC20-50-20. Compulsory minimum training standards.

A. Pursuant to the provisions of subdivisions 7, 8, and 9 of § 9.1-102 ~~and § 53.1-120~~ of the Code of Virginia, the department under the direction of the board establishes the ~~standards for Compulsory Minimum Training Standards for full and part-time Jailors or Custodial Officers, Courthouse and Courtroom Security Officers, and Process Service Officers. The complete document may be found on the Department of Criminal Justice Services' website at www.dcjs.virginia.gov.~~ compulsory minimum training standards for full-time and part-time deputy sheriffs and jail officers as defined in § 53.1-1 of the Code of Virginia; persons designated to provide courthouse and courtroom security pursuant to § 53.1-120 of the Code of Virginia; and persons designated to serve process pursuant to § 8.01-293 of the Code of Virginia.

B. ~~Academy training categories – Jailor~~ Individuals hired as deputy sheriffs or jail officers as defined in § 53.1-1 of the Code of Virginia shall meet or exceed compulsory minimum training standards at a certified [criminal justice] training academy and complete field training requirements. Certification requires deputy sheriffs and jail officers comply with the following:

1. Successfully complete jail officer department approved training at a certified [criminal justice] training academy in the following categories:

~~1.~~ a. Professionalism;

~~2.~~ b. Legal ~~Issues~~;

~~3. Communications~~ c. Communication;

~~4. Operations~~ d. Jail operations;

~~5.~~ e. Investigations;

~~6.~~ f. Defensive ~~Tactics/Use~~ tactics and use of ~~Force~~ force;

~~7.~~ g. Weapons ~~Use~~; and

~~8. Training~~ h. Driver training and transportation.

2. Meet or exceed the performance outcomes in the category of field training identified in the Virginia Department of Criminal Justice Services Field Training and On the Job Training Performance Outcomes.

C. ~~Jailor or Custodial Officer Field Training Category 9~~

~~D. Academy training categories – Courthouse and Courtroom Security Officer.~~

Individuals hired as courthouse and courtroom security officers shall meet or exceed compulsory minimum training standards at a certified [criminal justice] training academy and complete field training requirements. Certification requires courthouse and courtroom security officers comply with the following:

1. Successfully complete courthouse and courtroom security officers department approved training at a certified [criminal justice] training academy in the following categories:

~~1. Court Security~~ a. Professionalism;

~~2.~~ b. Legal ~~Issues~~;

~~3. Communications~~ c. Communication;

~~4.~~ d. Court ~~Security Operations~~ security operations;

~~5. Court Security~~ e. Investigations;

~~6.~~ f. Defensive ~~Tactics/Use~~ tactics and use of ~~Force~~ force;

~~7.~~ g. Weapons ~~Use~~; and

~~8. Transportation~~ h. Driver training and transportation.

~~E. Courthouse and Courtroom Security Officer Field Training Category 9~~

2. Meet or exceed the performance outcomes in the category of field training identified in the Virginia Department of Criminal Justice Services Field Training and On the Job Training Performance Outcomes.

D. Individuals hired as deputy sheriffs and designated to serve process shall meet or exceed compulsory minimum training standards at a certified [criminal justice] training academy and complete field training requirements. Certification requires courthouse and courtroom security officers comply with the following:

1. Successfully complete process service officer department approved training at a certified [criminal justice] training academy in the following categories:

~~F. Academy training categories – Process Service Officer.~~

~~1. Process Service Officer Operations~~ a. Professionalism;

~~2.~~ b. Legal ~~Issues~~;

~~3. Communications~~ c. Communication;

~~4.~~ d. Civil ~~Process Operations~~ process operations;

~~5. Civil Process Investigations~~

~~6.~~ e. Defensive ~~Tactics/Use~~ tactics and use of ~~Force~~ force;

~~7.~~ f. Weapons ~~Use~~; and

~~8. Transportation~~ g. Driver training.

~~G. Process Service Officer Field Training Category 9~~

2. Meet or exceed the performance outcomes in the category of field training identified in the Virginia Department of Criminal Justice Services Field Training and On the Job Training Performance Outcomes.

6VAC20-50-21. Approval authority.

A. The ~~Criminal Justice Services Board~~ board shall be the approval authority for the training categories of the compulsory minimum training standards identified in 6VAC20-50-20. Amendments to the training categories shall be made in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Committee on Training ~~of the Criminal Justice Services Board~~ shall be the approval authority for the performance outcomes, training objectives, criteria, and lesson plan guides that support the performance outcomes.

1. Performance outcomes, training objectives, criteria, and lesson plan guides supporting the compulsory minimum training standards may be added, deleted, or amended by the ~~Committee on Training~~ COT based ~~upon~~ on written recommendation of a chief of police, sheriff, agency administrator, academy director, Curriculum Review Committee (CRC), interested party, or member of the community.

~~Any suggestions~~ 2. Suggestions received related to performance outcomes, training objectives, criteria, and lesson plan guides shall be reviewed at the regularly scheduled meeting of the ~~Curriculum Review Committee~~ CRC. ~~If comment is received at any public hearing, the Committee on Training may make a decision at that time. Changes to the training categories will only be made in accordance with the provisions of the Administrative Process Act~~ The CRC shall present recommendations for revisions to the COT.

C. ~~Prior to~~ Before approving changes to the performance outcomes, training objectives, criteria, or lesson plan guides, the ~~Committee on Training~~ COT shall ~~conduct a public hearing~~ schedule an opportunity for public comment during a meeting of the COT. ~~Sixty~~ A minimum of 60 days ~~prior to~~ before the ~~public hearing~~ meeting of the COT, the proposed changes shall be distributed to all ~~affected parties~~ certified

[criminal justice] training academies for the opportunity to comment. Notice of ~~change of~~ changes to the performance outcomes, training objectives, criteria, and lesson plan guides shall be filed for publication in the Virginia Register of Regulations ~~upon adoption, change, or deletion~~.

D. The department shall notify each certified [criminal justice] training academy in writing of any ~~new, revised, or deleted objectives. Such adoptions, changes, or deletions shall become effective 30 days after notice of publication in the Virginia Register.~~ COT approved revisions. COT approved revisions require a minimum of 30 days' notice to certified [criminal justice] training academies prior to becoming effective.

6VAC20-50-30. Applicability.

A. ~~Every~~ A person employed as a ~~jailor or custodial~~ sheriff deputy or jail officer as defined in § 53.1-1 of the Code of Virginia and in accordance with subdivision 9 of § 9.1-102 of the Code of Virginia shall meet compulsory minimum training standards and requirements established in ~~subsections~~ subsection B~~, C, and D~~ of 6VAC20-50-20 and 6VAC20-50-40 unless provided otherwise in accordance with subsection D of this section.

B. Every person employed as a ~~Courthouse and Courtroom Security Officer~~ courthouse and courtroom security officer in accordance with subdivision 7 of § 9.1-102 of the Code of Virginia shall meet compulsory minimum training standards established in ~~subsections E and F~~ subsection C of 6VAC20-50-20 and 6VAC20-50-40 unless provided otherwise in accordance with subsection D of this section.

C. Every person employed as a ~~Deputy Sheriff Designated to Serve Process~~ deputy sheriff designated to serve process in accordance with § 15.2-1612.1 of the Code of Virginia shall meet compulsory minimum training standards established in ~~subsections G and H~~ subsection D of 6VAC20-50-20 and 6VAC20-50-40 unless provided otherwise in accordance with subsection D of this section.

D. The director may grant an exemption or partial exemption of the compulsory minimum training standards ~~as~~ established ~~herein~~ in this chapter, in accordance with § 9.1-116 of the Code of Virginia.

E. Deputy sheriffs, jail officers, courthouse and courtroom security officers, and deputy sheriffs designated to serve process who originally complied with all applicable training requirements and later separated from deputy sheriff, jail officer, courthouse and courtroom security officer, and deputy sheriff designated to serve process status in excess of 24 months, upon reentry as a deputy sheriff, jail officer, courthouse and courtroom security officer, or deputy sheriff designated to serve process will be required to complete all compulsory minimum training standards in accordance with 6VAC20-50-20 unless provided otherwise in accordance with subsection D of this section.

6VAC20-50-40. Time requirement for completion of training.

A. ~~Every jailor or custodial officer, courthouse and courtroom security officer and process service officer~~ Deputy sheriffs, jail officers, courthouse and courtroom security officers, and deputy sheriffs designated to serve process who ~~is~~ are required to comply with the compulsory minimum training standards [, field training, and other requirements] shall satisfactorily complete such training within 12 months of the date of appointment or hire as ~~a jailor or custodial officer, courtroom security officer or process service officer~~ deputy sheriffs, jail officers, courthouse and courtroom security officers, and deputy sheriffs designated to serve process unless provided otherwise in accordance with subsection B of this section.

B. The director or director's designee may grant an extension of the time limit for completion of the compulsory minimum training ~~required upon presentation of evidence by the agency administrator that such officer was unable to complete the required training within the specified time limit due to illness, injury, military service, special duty assignment required and performed in the public interest or leave without pay or suspension pending investigation or adjudication of a crime. The agency administrator shall request such extension prior to expiration of any time limit. C. Any jailor or custodial officer, courthouse and courtroom security officer or process service officer who originally complied with all applicable training requirements and later separated from jailor or custodial officer, courtroom security officer, process service officer status, in excess of 24 months, upon reentry as a jailor, courthouse and courtroom security officer/process server will be required to complete all compulsory minimum training standards unless provided otherwise in accordance with 6VAC20-50-30 D.~~ standards and requirements for the following reasons:

1. Medical condition;

2. Injury;

3. Military service; or

4. Administrative leave involving the determination of worker's compensation or disability retirement issues or suspension pending investigation or adjudication of a crime.

C. The director or director's designee may review and consider other reasons (e.g., natural disaster, family medical leave, etc.) for granting an extension. If approval is granted [,] the extension shall not exceed 90 days.

D. [The director or the director's designee may review and consider requests to renew training extensions if the reason for the original training extension continues and the request occurs before the expiration of the original extension.

E.] The director shall not grant an extension for failing to pass compulsory minimum training standards within the specified time limits.

[~~E.~~ F.] Deputy sheriffs, jail officers, courthouse and courtroom security officers, and deputy sheriffs designated to serve process who do not satisfactorily complete the compulsory minimum training standards [, field training,] and [other] requirements within 12 months of hire or appointment as a deputy sheriff, jail officer, courthouse and courtroom security officer, or deputy sheriff designated to serve process, or who do not receive an extension of the time limit for completion of the requirements, shall be subject to the provisions of § 9.1-115 of the Code of Virginia.

[~~F.~~ G.] The department shall notify the agency administrator of individuals not in compliance with the requirements of this section.

6VAC20-50-50. ~~How compulsory minimum training may be attained.~~ (Repealed.)

~~A. The compulsory minimum training standards shall be attained by attending and satisfactorily completing performance outcomes at certified training academy and field training requirements.~~

~~B. Officers attending a certified training academy are required to attend all classes and should not be placed on duty or on call except in cases of emergency.~~

~~C. All certified training academies that begin on or after July 1, 2007, shall be conducted in conformance with the Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service Officers as amended by the board on September 14, 2006. However, the period July 1, 2007, through June 30, 2008, shall serve as a transition period wherein certified training academies may be approved by the department to conduct training according to the Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial/Courthouse and Courtroom Security Officers/Deputy Sheriffs Designated to Serve Process as amended by the board on April 4, 1990, or according to the Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service Officers as amended by the board on September 14, 2006.~~

6VAC20-50-60. ~~Certified training academies.~~ (Repealed.)

~~A. To become a certified academy, a state or local unit of government must demonstrate a need that contains the following elements:~~

~~1. The inability to obtain adequate training from existing academies or a sufficient hardship that renders the use of other existing academies impractical.~~

~~2. Based upon a training needs assessment, a sufficient number of officers to warrant the establishment of a full-time training function for a minimum of five years.~~

~~B. In addition, the state or local unit of government must make the following commitments:~~

~~1. Provide a full range of training to include entry level training, in-service training, instructor certification and recertification training and specialized training.~~

~~2. Assignment of one position with primary responsibility as academy director and one clerical position to support training and training related functions.~~

~~3. Maintain a training facility adequate to conduct training in accordance with academy certification standards.~~

~~4. Commitment of sufficient funding to adequately support the training function.~~

~~C. Process.~~

~~1. The state or local governmental unit shall submit a justification, as outlined in subsection B of this section, to the Committee on Training, which shall review the justification and make a recommendation to the department as to whether the establishment of an academy is warranted.~~

~~2. If the Committee on Training recommends the establishment of the proposed academy, the department shall make a determination as to whether the establishment of the academy is warranted.~~

~~3. If the establishment of the academy is approved by the department, the proposed academy must successfully complete the academy certification process and be in compliance with § 15.2-1747 of the Code of Virginia.~~

~~D. Each certified academy director shall maintain a file of all current lesson plans and supporting material for each subject contained in the compulsory minimum training standards. The certified training academy shall submit to the department its curriculum and other information as designated within time limits established by the department.~~

~~E. Certified academies that are approved shall be subject to inspection and review by the director.~~

~~F. The department may suspend or revoke the approval of a certified training school academy upon written notice to the academy's director. The notice shall contain the reason(s) upon which the suspension or revocation is based. The academy's director may request a hearing before the director or his designee. The request shall be in writing and must be received by the department within 15 days of the date of the notice of suspension/revocation. The school's director may appeal the decision of the director or his designee to the board. Such request shall be in writing and must be received~~

~~by the board within 15 days of the date of the decision of the director or his designee.~~

6VAC20-50-70. ~~Grading~~ Attendance, testing, and grading.

~~A. All certified training academies shall utilize testing procedures that indicate that every officer, prior to satisfactory completion of the training, has passed the criteria for testing and met the training objectives related to each performance outcome specified in the document entitled "Performance Outcomes for Compulsory Minimum Training Standards for Jailors or Custodial Officer, Courthouse and Courtroom Security Officers and Process Service Officers."~~

A. Attendance.

1. Deputy sheriffs, jail officers, courthouse and courtroom security officers, and deputy sheriffs designated to serve process attending approved training are required to attend all classes and shall not be placed on duty or on call except in cases of emergency (e.g., natural disaster, etc.). In the event of such an emergency, the agency administrator or designee shall determine if it is appropriate to place officers on duty or on call and shall advise the academy director within 24 hours.

2. Officers shall be responsible for any material missed during an excused absence.

B. Academy testing.

1. Deputy sheriffs, jail officers, courthouse and courtroom security officers, and deputy sheriffs designated to serve process shall meet all the training objectives and pass all criteria for testing related to each performance outcome approved by the COT [~~of the board~~].

2. The officer may be tested and retested ~~as may be necessary~~ within the time limits of 6VAC20-50-40 A and each certified [criminal justice] training academy's written policy. An officer shall not be certified as having complied with the compulsory minimum training standards unless all ~~applicable~~ requirements have been met.

~~C. Certified training academies shall maintain accurate records of all tests, grades and testing procedures. Academy training records must be maintained in accordance with the provisions of these rules and §§ 42.1-76 through 42.1-91 of the Code of Virginia.~~

6VAC20-50-80. Failure to comply with rules and regulations.

~~Any individual~~ A. Individuals attending a certified [criminal justice] training academy shall comply with the rules and regulations promulgated by the department. The academy director shall be responsible for enforcement of all rules and regulations established to govern the conduct of attendees.

~~If the academy director considers a violation of the rules and regulations~~ B. Individuals violating the rules and regulations governing the certified [criminal justice] training academy determined to be detrimental to the welfare of the academy~~,~~ ~~the academy director may expel the officer from the academy~~ or the safety of officers, visitors, or personnel may be expelled. Notification of ~~such action shall~~ an expulsion will immediately be reported, in writing, to the agency administrator of the ~~officer in accordance with rules and regulations within the authority of the certified training academy~~ individual and the department.

6VAC20-50-90. Administrative requirements.

~~The academy director shall maintain a final curriculum that includes performance outcomes, hours and instructor names.~~

A. [~~Criminal justice agencies will receive a roster containing the names of those deputy sheriffs, jail officers, courthouse and courtroom security officers, and deputy sheriffs designated to serve process who have satisfactorily completed the compulsory minimum training standards within 60 days of completion. B.~~ Field training shall be completed in accordance with the requirements in 6VAC20-50-40.] The agency shall complete the appropriate department authorized field training completion form (Form J-1, Form CS-1, [~~and~~ or] Form CP-1) documenting the completion of field training for officers.

[~~C.~~ B.] The agency administrator shall sign and submit the field training completion form to the department for each officer [~~within 12 months of hire or appointment~~].

[~~D.~~ C.] Records and documentation shall be open to audit, inspection, and review by the department upon request.

[~~E.~~ D.] Training records shall be maintained in accordance with the provisions of this chapter and the Virginia Public Records Act (§ 42.1-76 et seq. of the Code of Virginia).

6VAC20-50-120. Certification status and in-service training.

A. Full-time and part-time law-enforcement officers of a police department or sheriff's office that is part of or administered by the Commonwealth or any political division, law-enforcement officers as defined in § 9.1-101 of the Code of Virginia, and all jail officers as defined in § 53.1-1 of the Code of Virginia must be certified through the successful completion of training at [~~an approved~~ a certified] criminal justice training academy in order to remain eligible for appointment or employment.

B. Deputy sheriffs, jail officers, courthouse and courtroom security officers, and deputy sheriffs designated to serve process shall comply with in-service training and firearms training requirements identified in 6VAC20-30.

6VAC20-50-130. Certified training academies.

Every criminal justice agency under the purview of the department shall be a member or a certified [criminal justice] training academy.

NOTICE: The following forms used in administering the regulation were 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 (6VAC20-50)

~~Application for Exemption from Virginia Compulsory Minimum Training Standards, Form W-2 (rev. 8/05)~~

[~~Application for Exemption from Virginia Compulsory Minimum Training Standards, Form W-2 (rev. 5/2018)~~]

Field Training: Jail Deputy and Jail Officer, J-1, (rev. 5/2018)

Field Training: Court Security Officer, CS-1, (rev. 5/2018)

Field Training: Civil Process Officers, CP-1, (rev. 5/2018)

DOCUMENTS INCORPORATED BY REFERENCE (6VAC20-50)

Virginia Department of Criminal Justice Services Field Training and On the Job Training Performance Outcomes, published September 2012, Virginia Department of Criminal Justice Services (Revised January 2018)

6VAC20-60-10. Definitions.

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

"Academy director" means the chief administrative officer of a certified [criminal justice] training academy.

"Agency administrator" means any chief of police, sheriff, ~~or~~ agency head of a state or local law-enforcement agency, or non-law-enforcement head of a communications center.

"Board" means the Criminal Justice Services Board.

"Certified [criminal justice] training academy" means a training facility [or campus] in compliance with academy certification or recertification standards and operated by the state or local ~~unit(s)~~ [~~unit~~ units] of government that is owned, leased, rented, or used exclusively for the purpose of ~~providing instruction of compulsory minimum training standards~~ training criminal justice professionals regulated by department and board. [Approved firing ranges, driving tracks, and defensive tactics training rooms are considered part of the academy facility, subject to review during academy certification and recertification.]

"Committee on Training" or "COT" means the standing committee of the board that is charged with reviewing proposed changes to the standards, receiving and reviewing public comments, and approving changes to the standards as needed.

"Compulsory minimum training standards" means the written performance outcomes approved by the Committee on Training and minimum [training] hours approved by the Criminal Justice Services Board.

"Curriculum Review Committee" means the committee consisting of the following nine individuals: two members of the committee shall represent regional criminal justice [training] academies, two members of the committee shall represent independent criminal justice [training] academies, one member shall represent the Department of State Police Training Academy, and four experienced communications personnel shall represent emergency communication functions. The Committee on Training shall appoint members of the Curriculum Review Committee.

"Department" means the Department of Criminal Justice Services.

["Designee" means one who acts with the authority of the chief executive of the agency.]

"Director" means the chief administrative officer of the ~~Department of Criminal Justice Services~~ department or the director's designee.

"Dispatcher" means any person employed by or in any local or state government agency either full time or ~~part time~~ part time whose duties include the dispatching of law-enforcement personnel.

~~"Emergency medical dispatcher training" means training which meets or exceeds the training objectives as provided in Performance Outcome 1.6, which is set out in 6VAC20-60-100.~~

~~"Standard" means Performance Outcome, Training Objective, Criteria for Testing, and Lesson Plan Guide relating to compulsory minimum training for dispatchers and is found on the department's website.~~

~~"VCIN/NCIC training" means approved training as specified by the Virginia Department of State Police for dispatchers accessing Virginia Crime Information Network/National Crime Information Center information.~~

"Mandated training" means training that satisfies compulsory minimum training requirements (i.e., basic and in-service training).

"Satellite facility" means a temporary facility located away from the certified academy facility, which the certified

[criminal justice training] academy uses exclusively to conduct in-service training.

6VAC20-60-20. Compulsory minimum training standards.

A. Pursuant to the provisions of subdivision 10 of § 9.1-102 ~~(10)~~ of the Code of Virginia, the department under the direction of the board establishes the categories of training as listed ~~below~~ in subsection B of this section as the compulsory minimum training standards for dispatchers~~:~~ whose duties include dispatching for law enforcement.

B. Individuals hired as dispatchers shall meet or exceed the compulsory minimum training standards in the following categories at a certified [criminal justice] training academy:

1. ~~Category 1 - Communications.~~ Communication;

2. ~~Category 2 -~~ Dispatcher ~~Judgment.~~ judgment;

3. ~~Category 3 -~~ Legal ~~Issues.~~; and

4. ~~Category 4 -~~ Professionalism.

~~5. Category 5 - On the Job Training.~~

C. Individuals hired as dispatchers shall meet or exceed the performance outcomes in the category of on-the-job training identified in the Virginia Department of Criminal Justice Services Field Training and On the Job Training Performance Outcomes.

6VAC20-60-25. Approval authority.

A. The ~~Criminal Justice Services Board~~ board shall be the approval authority for the training categories of the compulsory minimum training standards identified in 6VAC20-60-20. Amendments to training categories shall be made in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Committee on Training ~~of the Criminal Justice Services Board~~ (COT) shall be the approval authority for the performance outcomes, training objectives, criteria, and lesson plan guides that support the performance outcomes.

1. Performance outcomes, training objectives, criteria, and lesson plan guides supporting the compulsory minimum training standards may be added, deleted, or amended by the ~~Committee on Training~~ COT based ~~upon~~ on written recommendation of a chief of police, sheriff, agency administrator, academy director, non-law-enforcement head of a communications center, or the Curriculum Review Committee (CRC).

2. Suggestions received related to performance outcomes, training objectives, criteria, and lesson plan guides shall be reviewed by the CRC. The CRC shall present recommendations for revisions to the COT.

~~Prior to~~ C. Before approving changes to the performance outcomes, training objectives, criteria, or lesson plan guides, the ~~Committee on Training~~ COT shall ~~conduct a public hearing~~ schedule an opportunity for public comment during a meeting of the COT. ~~Sixty~~ A minimum of 60 days ~~prior to~~ before the ~~public hearing~~ meeting of the COT, the proposed changes shall be distributed to all ~~affected parties~~ certified [criminal justice] training academies for the opportunity to comment. Notice of ~~change of~~ changes to the performance outcomes, training objectives, criteria, and lesson plan guides shall be filed for publication in the Virginia Register of Regulations ~~upon adoption, change, or deletion~~.

D. The [department ~~Department~~] shall notify each certified [criminal justice] training academy in writing of any ~~new, revised, or deleted objectives~~ COT approved revisions. ~~Such adoptions, changes, or deletions shall become effective 30 days after notice of publication in the Virginia Register~~ COT approved revisions require a minimum of 30 days' notice to certified [criminal justice] training academies prior to becoming effective.

6VAC20-60-30. Applicability.

A. ~~All~~ Full-time or part-time dispatchers employed by or in any local or state government agency whose duties include the dispatching of law-enforcement personnel and who were hired on or after July 1, 1988, must meet compulsory minimum training standards ~~established at the time of their appointment,~~ and requirements as identified in 6VAC20-60-20 and 6VAC20-60-40 unless provided otherwise in accordance with subsection B of this ~~chapter~~ section.

B. The director may grant an exemption or partial exemption of the compulsory minimum training standards established ~~herein~~ in this chapter, in accordance with § 9.1-116 of the Code of Virginia.

C. Any dispatcher having previously and successfully completed the compulsory minimum training standards who resigns and is reappointed within 24 months from departure will not be required to complete the academy training class.

6VAC20-60-40. Time requirement for completion of training.

A. ~~Every dispatcher who is~~ Dispatchers required to comply with the compulsory minimum training standards must satisfactorily complete the required training set forth in 6VAC20-60-20~~,~~ within 24 months of the date of [hire or] appointment as a dispatcher, unless provided otherwise in accordance with subsection B of this section.

B. The director [or the director's designee] may grant an extension of the time limit for completion of the compulsory minimum training standards ~~under~~ and requirements for the following ~~conditions:~~ reasons [~~:~~]

~~1.~~ [~~The chief of police, sheriff, or agency administrator shall present written notification that the dispatcher was unable to complete the required training within the specified time limit due to:~~]

~~a. Illness~~ 1. Medical condition;

~~b.~~ 2. Injury;

~~c.~~ 3. Military service; or

~~d. Special duty assignment required and performed in the public interest;~~

~~e.~~ 4. Administrative leave involving the determination of workers' compensation or disability retirement issues~~,~~ or suspension pending investigation or adjudication of a crime~~; or~~.

~~f. Any other reason documented by the agency administrator. Such reason must be specific and any~~ C. The director or the director's designee may review and consider other reasons (e.g., natural disaster, family medical leave, etc.) for granting an extension. If approval is granted, the extension shall not exceed 90 days.

~~2. Any extension granted under subdivision 1 e of this subsection shall require the dispatcher to complete compulsory minimum training prior to resuming job duties. Requests may be granted for periods not to exceed 12 months.~~

D. [The director or the director's designee may review and consider requests to renew training extensions if the reason for the original training extension continues and the request occurs before the expiration of the original extension.

E.] The director shall not grant an extension for failing to pass compulsory minimum training standards and requirements within specified time limits.

[~~E.~~ F.] The agency administrator may request an extension from the director or the director's designee.

1. The request shall be in writing and include written documentation articulating the reason the individual is unable to complete the required training within the specified time limits.

2. The request shall be submitted to the department before the expiration of the specified time limits.

3. Dispatchers who do not satisfactorily complete compulsory minimum training standards [and on-the-job training] within 24 months of appointment as a dispatcher and who do not receive an extension of the time limit for completion of the requirements shall be subject to the provisions of § 9.1-115 of the Code of Virginia.

~~3. The agency administrator must request such extension prior to expiration of any time limit.~~

~~C. Any dispatcher having previously and successfully completed the compulsory minimum training standards who resigns and is reappointed within 24 months from departure will not be required to complete the academy training class.~~

6VAC20-60-50. ~~Compliance with compulsory minimum training standards.~~ (Repealed.)

~~A. The compulsory minimum training standards shall be accomplished by satisfactory completion of the academy training objectives at a certified training academy and the successful completion of on the job training objectives as provided by 6VAC20-60-30 B.~~

~~B. Dispatchers attending compulsory minimum training at a certified training academy are required to attend all classes and should not be placed on duty or call except in cases of emergency.~~

~~C. The Criminal Justice Services Board will provide a transition period for implementation of this chapter. The transition period shall begin January 1, 2002. During the transition period, certified training academies may conduct dispatcher entry-level training using the performance objectives within the "Rules Relating to Compulsory Minimum Training Standards for Dispatchers," effective January 1, 1994, or the performance outcomes and training objectives. Accordingly, any certified training academy may institute a curriculum transition by replacing existing performance objectives with the revised performance outcomes and training objectives. Effective January 1, 2003, all entry level training programs shall meet the requirements of 6VAC20-60-100.~~

6VAC20-60-60. ~~Approved training schools.~~ (Repealed.)

~~A. Dispatcher classroom training may only be provided by a certified training academy. The certified training academy shall submit to the department the curriculum and other information as designated, within time limitations established by the department.~~

~~B. Each academy director will be required to maintain a file of all current lesson plans and supporting materials for each subject contained in the compulsory minimum training standards.~~

~~C. A certified training academy is subject to inspection and review by the director or staff.~~

~~D. To become a certified academy, a state or local unit of government must demonstrate a need that contains the following elements:~~

~~1. The inability to obtain adequate training from existing academies or a sufficient hardship that renders the use of other existing academies impractical.~~

~~2. Based upon a training needs assessment, a sufficient number of officers to warrant the establishment of a full-time training function for a minimum of five years.~~

~~E. In addition, the state or local unit of government must make the following commitments:~~

1. The provision of a full range of training to include entry-level training and specialized training.

2. The assignment of one position with primary responsibility as academy director and one clerical position to support training and training related functions and instructor certification.

3. The maintenance of a training facility adequate to conduct training in accordance with academy certification standards.

4. The commitment of sufficient funding to adequately support the training function.

F. Process.

1. The state or local governmental unit shall submit a justification to the Committee on Training as described in subsection D of this section. The Committee on Training shall review the justification and make a recommendation to the department as to whether the establishment of an academy is warranted.

2. If the Committee on Training recommends the establishment of the proposed academy, the department shall make a determination as to whether the establishment of the academy is warranted.

3. If the establishment of the academy is approved by the department, the proposed academy must successfully complete the academy certification process.

G. The certified training academy shall submit to the department its curriculum and other information as designated within time limitations established by the department.

H. Each academy director shall maintain a file of all current lesson plans and supporting material for training objectives, and shall provide this information to the director upon request.

I. A certified training academy is subject to inspection and review by the director or his staff.

J. The department may suspend or revoke the certification of any certified training academy upon written notice, which shall contain the reason or reasons upon which the suspension or revocation is based, to the academy's director. The academy's director may request a hearing before the director. The request shall be in writing and shall be received by the department within 15 days of the date of the notice of the suspension or revocation. The academy's director may appeal the director's decision to the board.

6VAC20-60-70. ~~Grading~~ Attendance, testing, and grading.

A. ~~All certified training academies shall utilize testing procedures that indicate that every dispatcher has satisfactorily completed the criteria in each training objective approved by the Committee on Training of the Criminal Justice Services Board.~~ Attendance.

1. Dispatchers attending approved training are required to attend all classes and shall not be placed on duty or on call except in cases of an emergency. If there is an emergency (e.g., natural disaster, catastrophic event, etc.) the agency administrator or designee shall determine if it is appropriate to place dispatchers on duty or on call and shall advise the academy director within 24 hours.

2. Dispatchers shall be responsible for any material missed during an excused absence.

B. Academy testing.

1. Dispatchers shall comply with the requirements of 6VAC20-60-20.

2. Each dispatcher shall meet all the training objectives and pass each criteria for testing related to every performance outcome approved by the COT.

3. A dispatcher may be tested and retested ~~as may be necessary~~ within the time limits of 6VAC20-60-40 and in accordance with ~~each~~ the certified [criminal justice] training academy's written policy.

~~B. Certified training academies shall maintain accurate records of all tests, grades and testing procedures. Academy training records must be maintained in accordance with the provisions of this chapter and §§ 42.1-76 through 42.1-91 of the Code of Virginia.~~

~~C. Every individual attending compulsory minimum training shall satisfactorily complete each required performance outcome, training objective, and criteria, and any optional job related subject performance requirements, where applicable. Any individual who fails to satisfactorily complete any performance outcomes or objectives in any subject will be required to attend that subject in a subsequent approved dispatcher training school and satisfactorily complete the required performance objective or objectives.~~

6VAC20-60-80. Failure to comply with rules and regulations.

A. Any individual attending a certified [criminal justice] training academy shall comply with the rules and regulations promulgated by the department. The academy director shall be responsible for enforcement of all rules and regulations established to govern the conduct of attendees.

~~If the academy director considers a violation of the rules and regulations~~ B. Individuals violating the rules and regulations governing the certified [criminal justice] training academy determined to be detrimental to the welfare of the certified [criminal justice] training academy~~, the academy director may expel the individual~~ or the safety of dispatchers, visitors, or personnel may be expelled from the certified [criminal justice] training academy.

C. Notification of ~~such action shall~~ an expulsion will immediately be reported, in writing, to the agency

administrator of the ~~dispatcher and the director~~ individual and the department.

6VAC20-60-90. Administrative requirements.

A. ~~Reports will be required from the agency administrator and academy director on forms approved or provided by the department and at such times as designated by the director. [Agencies will receive a roster containing the names of those dispatchers who have satisfactorily completed the compulsory minimum training standards within 60 days of completion. B.]~~ The agency shall complete the department authorized on-the-job training completion form (Form D-1) documenting the completion of on-the-job training for dispatchers.

[~~C.~~ B.] The agency administrator shall, within the time requirement set forth in subsection A of 6VAC20-60-40, sign and forward a properly executed on-the-job training form to the department for each dispatcher.

~~C. The academy director shall, within 30 days upon completion of the dispatcher training:~~

~~1. Submit to the department a roster containing the names of those dispatchers who have satisfactorily completed the compulsory minimum training standards.~~

~~2. Submit to the department the final curriculum with the training objectives and instructor names listed.~~

~~D. The academy director shall furnish each instructor with the performance-based training and testing objectives for the assigned subject matter.~~

~~E. Each certified training academy shall maintain accurate records of all tests, grades and testing procedures.~~

[~~D.~~ C.] Records and documentation shall be open to audit, inspection, and review by the department upon request.

[~~E.~~ D.] Dispatcher training records shall be maintained in accordance with the provisions of ~~these regulations~~ this chapter and ~~§§ 42.1-67 through 42.1-91~~ the Virginia Public Records Act (§ 42.1-76 et seq. of the Code of Virginia).

6VAC20-60-95. Certified training academies.

Every criminal justice agency under the purview of the department shall be a member of a certified [criminal justice] training academy.

NOTICE: The following forms used in administering the regulation were 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 (6VAC20-60)

~~Application for Exemption From Virginia Compulsory Minimum Training Standards, Form W-2, rev. 04/10.~~

~~On the Job Training Dispatchers, Form D-1, rev. 09/02.~~

[~~Application for Exemption from Virginia Compulsory Minimum Training Standards, Form W-2 (rev. 5/2018)~~]

On the Job Training Dispatchers, Form D-1 (rev. 5/2018)

DOCUMENTS INCORPORATED BY REFERENCE (6VAC20-60)

Virginia Department of Criminal Justice Services Field Training and On the Job Training Performance Outcomes, published September 2012, Virginia Department of Criminal Justice Services (Revised January 2018)

EDITOR'S NOTE: The proposed amendments to 6VAC20-70, which were published in 34:21 VA.R. 2082-2112 June 11, 2018, were not adopted by the Criminal Justice Services Board. Since no changes were made to this chapter, the text is removed from the final regulation.

CHAPTER 90
RULES RELATING TO ~~REGIONAL~~ CRIMINAL JUSTICE TRAINING ACADEMIES

6VAC20-90-10. Definitions.

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

"Academy director" means the chief administrative officer of a certified [criminal justice] training academy.

"Agency administrator" means any chief of police, sheriff, or agency head of a state or local law-enforcement agency [or agency head of a local correctional facility as defined in § 53.1-1 of the Code of Virginia].

"Approved training" means any training approved by the department to meet minimum training standards.

"Board" means the Criminal Justice Services Board.

"Certified [criminal justice] training academy" means a training facility [or campus] in compliance with academy certification or recertification standards operated by the state or local [~~unit~~ units] of government that is owned, leased, rented, or used exclusively for the purpose of training criminal justice professionals regulated by the department and board. [Approved firing ranges, driving tracks, and defensive tactics training rooms are considered part of the academy facility, subject to review during academy certification and recertification.]

"Committee on Training" or "COT" means the standing committee of the board that is charged with reviewing proposed changes to the standards, receiving and reviewing

public comments, and approving changes to the standards as needed.

"Compulsory minimum training standards" means the written performance outcomes approved by the Committee on Training and the minimum [training] hours approved by the Criminal Justice Services Board.

"Department" means the Department of Criminal Justice Services.

["Designee" means one who acts with the authority of the chief executive of the agency.]

"Director" means the chief administrative officer of the department.

"External [~~classroom~~ training location]" means a training [~~room~~ location] approved by the department located away from the certified [criminal justice training] academy, which the certified [criminal justice training] academy uses to conduct mandated training [~~,~~] using full-time [and part-time] academy staff with general instructorships.

"Mandated training" means training that satisfies compulsory minimum training requirements (i.e., basic and in-service training).

"Regional Academy" means [~~Regional Criminal Justice Training Academy~~ a regional criminal justice academy as defined by § 15.2-1747 of the Code of Virginia].

"Satellite facility" means a temporary facility located away from the certified academy facility, which the certified academy uses exclusively to conduct in-service training.

6VAC20-90-20. Designation.

A. The regional academies set forth ~~below~~ in this subsection are designated as regional academies and are eligible to receive allocated funds from the department.

Cardinal Criminal Justice Academy

~~Salem, Virginia~~

Central Shenandoah Criminal Justice Training Academy

~~Waynesboro, Virginia~~

Central Virginia Criminal Justice Academy

~~Lynchburg, Virginia~~

Crater Criminal Justice Academy

~~Petersburg, Virginia~~

Hampton Roads Regional Academy of Criminal Justice

~~Newport News, Virginia~~

New River Criminal Justice Training Academy

~~Radford, Virginia~~

Northern Virginia Criminal Justice Academy

~~Ashburn, Virginia~~

Piedmont Regional Criminal Justice Training Academy

~~Martinsville, Virginia~~

Rappahannock Regional Criminal Justice Academy

~~Fredericksburg, Virginia~~

Skyline Regional Criminal Justice Academy

~~Front Royal, Virginia~~

Southwest ~~Law Enforcement~~ Virginia Criminal Justice Academy

~~Bristol, Virginia~~

B. Jurisdictions may operate their own certified independent training academies if approved by the department; however, no state funds will be available for such academies. A jurisdiction, within or without the Commonwealth, may join a regional academy ~~at any time~~ subject to complying with the ~~policies established by the board~~ requirements of §§ 15.2-1300 and 15.2-1747 of the Code of Virginia, and this chapter.

~~C. A regional academy site may be changed by the academy governing body with the approval of the board.~~

~~D. Training, where practical, shall be conducted at designated satellite locations throughout the geographical confines of the regional academy to ensure minimum travel for student officers.~~

~~E. The board shall define geographical boundaries of designated regional academies.~~

6VAC20-90-30. Academy governing body.

Each regional academy shall have a charter, which shall be established in accordance with ~~§~~ §§ 15.2-1300 and 15.2-1747 of the Code of Virginia. ~~The charter shall, in accordance with guidelines established by the board, create an academy governing body and specify the composition, authority and functions of the academy governing body and selection criteria and duties of the regional academy director.~~

6VAC20-90-40. Funds.

The department will disburse funds to the regional academies designated in 6VAC20-90-20 in accordance with the appropriations made to the department for the purpose of providing financial support to the regional training academies. ~~Financial reports~~ An operating budget and independent audit by a third-party auditor will be required ~~as determined by the department~~ to be submitted to the department annually.

6VAC20-90-60. Academy creation.

A. Conduct training needs assessment. To determine if a need exists for the creation of a certified [criminal justice] training academy, a state or local unit of government must

complete a training needs assessment. The needs assessment will evaluate the following:

1. The inability to obtain adequate training from existing academies.

2. A hardship that renders the use of other existing academies impractical.

3. The number of criminal justice professionals (i.e., students) the certified [criminal justice] training academy would serve.

4. That there are a sufficient number of criminal justice professionals, financial resources, and academy personnel to support the creation and maintenance of a full-time regional or independent training academy for a minimum of five years.

B. Identify and acknowledge commitments. The state or local unit of government shall in writing make the following commitments:

1. The provision of a full range of training to include basic training, in-service training, and instructor certification and recertification training.

2. The assignment of one position with primary responsibility as academy director and one clerical, financial officer [,] or support position to support training and training-related functions.

3. The provision of adjunct instructors to instruct classes and courses.

4. The maintenance of a training facility adequate to conduct training in accordance with academy certification standards.

5. The commitment of sufficient funding to adequately support the training function.

C. Review and consideration.

1. The state or local governmental unit shall submit a training needs assessment and written commitments to the Committee on Training (COT) as described in subsections A and B of this section.

2. [The department and the COT shall review and consider assessments after reviewing the mutual agreement documents signed by the separating agency and the certified criminal justice training academy.

3.] The COT shall review the assessment and make a recommendation to the department as to whether the creation of an academy is warranted.

[~~3.~~ 4.] If the COT recommends the creation of the proposed academy, the department shall make a determination as to whether the creation of an academy is warranted.

a. If the creation of a regional academy is approved by the department, the governing bodies or political subdivisions of the proposed academy must successfully complete the academy certification process and be in compliance with the provisions of § 15.2-1747 of the Code of Virginia.

b. If the creation of an independently operated academy is approved by the department, the governing body of the proposed academy must successfully complete the academy certification process and be in compliance with the provisions of subsection D of § 15.2-1747 of the Code of Virginia.

6VAC20-90-70. Academy certification.

A. An academy shall not conduct mandated training until the academy meets all certification requirements.

B. Training academies, all places of operation (i.e., satellite facilities, external [~~classrooms~~ training locations], firing range, driving course, etc.), and the records are subject to audit, inspection, and review by the department. Audits and inspections may be announced or unannounced.

C. The academy must formally request academy certification status from the department and meet the following requirements:

1. The department will establish a mutually agreeable date with the academy director and conduct the on-site assessment for academy certification.

2. The academy shall meet 100% [of] the academy certification standards identified in the DCJS Certified Criminal Justice Training Academy Certification Checklist and Report in each of the following categories:

a. Administration;

b. Personnel;

c. Facility;

d. Instruction; and

e. Satellite facility.

3. Certification is valid for one year from the date of certification.

a. In order to maintain certification status, the academy must successfully complete the academy recertification process before the expiration of the original certification.

b. The recertification will extend the expiration date to June 30 of the third year following the date of recertification.

D. If the academy does not meet one or more certification standards identified in the DCJS Certified Criminal Justice Training Academy Certification Checklist and Report:

1. The academy director will receive written notification of the certification standards that have not been met and the date when a reassessment will be conducted.

2. The department shall provide the written notification and date of reassessment within five business days of the last date of assessment.

3. The academy will be given time to correct the [~~situation~~ noncompliance], not to exceed 60 days.

4. Department staff shall reassess the academy. If the academy does not meet one or more of the certification standards upon reassessment, the department will provide written notification of the standards not met during reassessment to the academy director and agency administrator or board chairman of the academy. The academy will have a maximum of 30 days to comply with all certification standards.

5. A second reassessment will be conducted no later than 30 days following the first reassessment. If the academy is still not in compliance with all certification standards at the time of the second reassessment, the department shall not certify the academy.

6. The academy director may appeal the findings of the academy certification to the director. The decision of the director is final.

E. Academies failing to meet the certification requirements or losing on appeal shall restart the academy certification process identified within this section beginning with 6VAC20-90-70 C.

6VAC20-90-80. Academy recertification.

A. A certified [criminal justice] training academy shall not conduct mandated training for courses in which it is not in compliance with regulatory and certification requirements.

B. A certified [criminal justice] training academy, all places of operation (i.e., satellite facilities, firing range, driving course, etc.), and the records are subject to audit, inspection, and review by the department. Audits and inspections may be announced and unannounced.

C. The certified [criminal justice] training academy must successfully complete the academy recertification process before June 30 of the third year from the last date of recertification.

D. The department will establish a mutually agreeable date with the academy director and conduct the on-site assessment for academy recertification.

1. The certified [criminal justice] training academy shall [~~meet 100% of~~ be assessed for compliance with] the academy certification standards identified in the DCJS Certified Criminal Justice Training Academy Recertification Checklist and Report in each of the following categories:

a. Administration;

b. Personnel;

c. Facility;

d. Instruction; and

e. Satellite facility.

2. If the certified [criminal justice] training academy does not meet one or more recertification standards identified in the DCJS Certified Criminal Justice Training Academy Recertification Checklist and Report:

a. The academy director will receive written notification of the recertification standards that have not been met along with a department drafted corrective action plan and the date when a reassessment will be conducted within five business days from the last date of assessment.

b. The certified [criminal justice] training academy will be given time to correct the [~~situation~~ noncompliance], not to exceed 60 days.

c. The department staff shall reassess the certified [criminal justice] training academy. If the certified [criminal justice] training academy does not meet one or more of the certification standards upon reassessment, the department will provide written notification of the standards not met during reassessment to the academy director and agency administrator, or board chairman of the certified [criminal justice] training academy. The certified [criminal justice] training academy will have a maximum of 30 days to comply with all certification standards.

d. A second reassessment will be conducted no later than 30 days following the first reassessment. If the certified [criminal justice] training academy is [~~still~~] not in compliance with all certification standards [or has failed to adopt and implement the department issued corrective action plan] at the time of the second reassessment, the director shall suspend the [~~academies~~ academy's] certification in accordance with 6VAC20-90-100 and conduct a hearing within 30 days to determine the status of the academy's certification.

E. The director shall review all pertinent documents.

1. The academy will have an opportunity to make a verbal presentation.

2. After a review of all pertinent information, the director shall determine the status of the academy certification.

F. The academy director may seek appeal to the enforcement actions identified in 6VAC20-90-100 of the academy recertification assessment.

1. The academy director may request a hearing before [the] Executive Committee of the Criminal Justice Services Board. The request shall be in writing and shall be received by the department within 15 days of the date of the notice of probation, suspension, or revocation.

2. The academy will have an opportunity to make a verbal presentation before the executive committee.

3. After a review of all pertinent information, the executive committee shall determine the status of the certification.

6VAC20-90-90. Training requirements, approvals, audits, inspections, and reviews.

A. The certified [criminal justice] training academy shall conduct mandated (e.g., basic) training using the Virginia Criminal Justice Services Training Manual and Compulsory Minimum Training Standards for:

1. Law enforcement officers in accordance with the requirements of 6VAC20-20-21 B 1.

2. Deputy sheriffs and jail officers in accordance with the requirements of 6VAC20-50-20 B 1.

3. Courthouse and courtroom security officers in accordance with the requirements of 6VAC20-50-20 C 1.

4. Deputy sheriffs designated to serve process in accordance with the requirements of 6VAC20-50-20 D 1.

5. Dispatchers in accordance with the requirements of 6VAC20-60-20 B.

6. Noncustodial employees of the Department of Corrections designated by the Director of the Department of Corrections to carry a weapon in accordance with the requirements of 6VAC20-70-20.

7. Correctional officers of the Department of Corrections in accordance with the requirements of 6VAC20-100-20 B 1.

B. The certified [criminal justice] training academy shall submit to the department its curriculum containing the performance outcomes, instructor names, and the dates and times for all basic training, including all instructor schools and field training officer schools, and a letter requesting approval (e.g., memorandum of transmittal) at least 30 days before the start of the course.

C. The department shall review the documents submitted, and if approved, the department shall notify the certified [criminal justice] training academy in writing of course approval.

D. The certified [criminal justice] training academy shall approve in-service training in accordance with the requirements identified in 6VAC20-30.

E. The department shall conduct training audits, inspections, and review.

6VAC20-90-100. Enforcement actions for recertification.

A. The department shall use the enforcement actions provided in this subsection when identifying noncompliance of this chapter that varies from the intent of this chapter by academies and certified [criminal justice training] academies.

1. Probation is a written notification for violations of department rules or regulations requiring continuous oversight by the department for a specific duration of time.

2. Suspension is a written notification of the removal of authorization to conduct, instruct, or hold specified courses or schools for violations of this chapter for a specific duration of time.

3. Revocation is a written notification by the director of the deactivation and removal of authorization issued under certification to operate as a certified [criminal justice] training academy for violations of this chapter for an indefinite period of time.

B. The enforcement actions and procedures provided in this subsection are not mutually exclusive. The department may invoke as many enforcement actions as the situation requires.

1. The department may consider probation, suspension, or revocation status for a certified [criminal justice] training academy with documented noncompliance for one or more academy recertification standards when the certified [criminal justice] training academy has failed to correct the noncompliance in accordance with the recertification process and timeline identified in 6VAC20-90-80.

2. If there is a life, health, or safety issue or felonious criminal activity occurring during any department or academy approved training, at any location, the director may unilaterally revoke the academy's certification. The status of the revocation shall be reviewed at the next scheduled Criminal Justice Services Board meeting.

6VAC20-90-110. Enforcement actions for instruction and training.

A. The department shall use the enforcement actions provided in this subsection when identifying noncompliance of this chapter by certified training academies.

1. Probation is a written notification for violations of department rules or regulations requiring continuous oversight by the department for a specific course or class.

2. Suspension is a written notification of the removal of authorization to conduct, instruct, or hold specified courses or schools for violations of this chapter.

B. The department may conduct training audits inspections and reviews and immediately suspend a class, course, or training if there is a violation of academy certification or recertification standard or requirements or if there is a life, health, or safety issue or felonious criminal activity occurring at an academy or a satellite facility. The suspension shall remain in place until the noncompliance is corrected.

C. The department may assign probation status to a certified [criminal justice] training academy's course or class. This allows a certified academy to conduct a class with oversight from the department.

D. Probation and suspension status shall be reviewed by the department upon compliance with all requirements.

6VAC20-90-120. Attendance, testing, grading, and recordkeeping.

A. The certified [criminal justice] training academy shall establish, maintain, and follow a policy that requires criminal justice professionals to attend all classes except in emergency situations (i.e., natural disaster, catastrophic event, etc.) and notify criminal justice professionals of their responsibility for any material missed during an excused absence per academy policy.

B. The certified [criminal justice] training academy shall utilize testing procedures that indicate that every criminal justice professional has satisfactorily completed the criteria for every training objective and performance outcome approved by the Committee on Training of the Criminal Justice Services Board and located in the Virginia Criminal Justice Services Training Manual and Compulsory Minimum Training Standards.

C. A criminal justice officer may be tested and retested as may be necessary within the time limits of 6VAC20-20-40, 6VAC20-50-40, 6VAC20-60-40, 6VAC20-70-40, or 6VAC20-100-40 and in accordance with each certified [criminal justice] training academy's written policy.

D. Law-enforcement certification exam.

1. The department shall generate and proctor the law-enforcement certification exam.

2. All certified training academies shall document that each law-enforcement officer has complied with all minimum training standards in all categories identified in 6VAC20-20-21 before scheduling the law-enforcement certification exam.

3. Upon documented compliance with the minimum training standards identified in 6VAC20-20-21 officers will be eligible to complete the law-enforcement certification exam.

E. The academy director shall certify [each] criminal justice professional [~~have~~ has] complied with the applicable rules relating to the compulsory minimum training standards and requirements. The academy director shall submit the following information using the department's electronic training records management system within 60 days of the last day of completing the compulsory minimum training or in-service training.

1. Name of certified [criminal justice] training academy and academy director's name;

2. Start and end dates of training;

3. Name and type of course;

4. Social security number of criminal justice professionals;

5. Last name, first name, and middle initial of criminal justice professionals;

6. Name of criminal justice professional's employing agency; and

7. Academy director's signature and date.

F. Certified [criminal justice] training academies shall maintain accurate records of all tests, grades, and testing procedures.

G. The certified [criminal justice] training academy director shall maintain a file of all current lesson plans and supporting material for training objectives and shall provide this information to the director upon request.

H. The certified [criminal justice] training academy shall maintain training records in accordance with the provisions of this chapter and the Virginia Public Records Act (§ 42.1-76 et seq. of the Code of Virginia).

6VAC20-90-130. Failure to comply with rules and regulations.

A. The academy director shall be responsible for enforcement of all rules and regulations established to govern the conduct of attendees.

B. Any individual attending a certified [criminal justice] training academy shall comply with the rules and regulations promulgated by the certified [criminal justice] training academy and the department.

C. Individuals violating the rules and regulations governing the certified [criminal justice] training academy or violating the rules of the certified [criminal justice] training academy determined to be detrimental to the welfare of the academy or the safety of [~~officers~~ criminal justice professionals], visitors, or personnel may be expelled.

D. Notification of expulsion will immediately be reported in writing to the agency administrator of the individual and the department.

DOCUMENTS INCORPORATED BY REFERENCE (6VAC20-90)

DCJS Certified Criminal Justice Training Academy Certification Checklist and Report, May 2018, Virginia Department of Criminal Justice Services

DCJS Certified Criminal Justice Training Academy Recertification Checklist and Report, May 2018, Virginia Department of Criminal Justice Services

Satellite Facility Worksheet, May 2018, Virginia Department of Criminal Justice Services

Virginia Criminal Justice Services Training Manual and Compulsory Minimum Training Standards, published online September 2012, (Revised [~~March~~ September] 2018) available on the Virginia Department of Criminal Justice Services website at https://www.dcjs.virginia.gov/law-enforcement/manual

6VAC20-100-10. Definitions.

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

"Academy director" means the chief administrative officer of a certified [criminal justice] training academy.

"Agency administrator" means any chief of police, sheriff ~~or,~~ agency head of a state~~,~~ or local law-enforcement agency, or the director of the Department of Corrections [~~,~~] or his designee.

~~"Approved training school" means a training school which provides instruction of at least the minimum training standards as mandated by the board and has been approved by the department for the specific purpose of training criminal justice personnel.~~

"Approved training" means training approved by the department to meet minimum training standards.

"Board" means the Criminal Justice Services Board.

~~"Corrections facility director/manager" means the chief administrative officer of a correctional facility.~~

"Certified [criminal justice] training academy" means a training facility [or campus] in compliance with academy certification or recertification standards and operated by the state or local unit of government that is owned, leased, rented, or used exclusively for the purpose training criminal justice professionals regulated by department and board. [Approved firing ranges, driving tracks, and defensive tactics training rooms are considered part of the academy facility, subject to review during academy certification and recertification.

"Compulsory minimum training standards" means the written performance outcomes approved by the Committee on Training and the minimum training hours approved by the Criminal Justice Services Board.]

"Committee on Training" or "COT" means the standing committee of the board that is charged with reviewing proposed changes to the standards, receiving and reviewing public comments, and approving changes to the standards as needed.

"Curriculum Review Committee" means the committee consisting of nine individuals representing the Department of Corrections. Two members of the committee shall represent the western region, two members shall represent the eastern region, two members shall represent the central region, and three members shall represent administration.

"Department" means the Department of Criminal Justice Services.

["Designee" means one who acts with the authority of the chief executive of the agency.]

"Director" means the chief administrative officer of the department or the director's designee.

~~"Full-time attendance" means that officers in training shall attend all classes and shall not be placed on duty or call except in cases of emergency for the duration of the school.~~

["External training location" means a training location approved by the department located away from the certified criminal justice training academy, which the certified criminal justice training academy uses to conduct mandated training using full-time and part-time academy staff with general instructorships.]

"Satellite facility" means a temporary facility located away from the certified [criminal justice] training academy facility, which the certified academy uses exclusively to conduct in-service training.

~~"School director" means the chief administrative officer of an approved training school.~~

6VAC20-100-20. Compulsory minimum training standards.

A. Pursuant to the provisions of ~~§ 9-170 7 of the~~ subdivision 9 of § 9.1-102 of the Code of Virginia, the department under the direction of the board establishes ~~the following as~~ the compulsory minimum training standards for full-time or part-time correctional officers of the Department of Corrections~~, Division of Adult Institutions~~.

~~The performance objectives constituting the institutional and academy for staff development core and sub-core curricula is detailed in the document entitled, "Performance Based Training and Testing Objectives for Compulsory Minimum Training for Correctional Officers of the Department of Corrections, Division of Adult Institutions" (June, 1986),~~

which is incorporated by reference and made a part of these regulations.

A. Basic correctional officer training – institutional training.

1. Core curriculum.

4.0. Key Control

5.0. Tool Control

6.0. Control/Account for Inmates

10.0. Search Procedures – Persons

11.0. Search Procedures – Objects

12.0. Search Procedures – Vehicles

13.0. Search Procedures – Areas

14.0. Control of Movement In and Out of Facility – Perimeter

15.0. Control of Movement In and Out of Tower

16.0. Control of Movement In and Out of Sally Port

17.0. Control of Movement In and Out of Visiting Room

18.0. Control of Movement In and Out of Gates

19.0. Radio/Telephone Communications

20.0. Control of Movement – Control Room

21.0. Control of Movement – Master Control

22.0. Maintaining Effective Security Equipment

23.0. Control of Contraband

24.0. Control of Movement Using Restraints

24.1. Identification of Restraints

24.2. Use of Restraints

25.0. Control of Inmate Movement – Internal

26.0. Transportation and Escorting

32.0. Communication of Critical Information to Correctional Officers

33.0. Communication of Critical Information to Supervisors

34.0. Enforcing Laws, Rules and Regulations

35.0. Enforcing Laws, Rules and Regulations – Behavior Adjustment

36.0. Enforcing Laws, Rules and Regulations – Adjustment Committee

37.0. Enforcing Laws, Rules - ICC

43.0. Use of Force – Firearms

44.0. Emergency Preparedness and Response – Riot or Disturbance

45.0. Emergency Preparedness and Response

46.0. Emergency Preparedness and Response – Hostage

47.0. Emergency Preparedness and Response – Minor Disturbance

48.0. Emergency Preparedness and Response – First Aid

50.0. Inmate Supervision – Providing Information

52.0. Inmate Supervision – Work/Recreation

53.0. Inmate Welfare – Receiving

54.0. Inmate Welfare – Medical Care

55.0. Inmate Welfare – Mail

56.0. Inmate Welfare – Personal Property

57.0. Inmate Welfare – Housekeeping/Laundry

.....TOTAL INSTITUTIONAL CURRICULUM HOURS - 80

B. Basic correctional officer training – academy for staff development.

1. Core curriculum.

1.0. Role of the Correctional System

2.0. Corrections Within the Criminal Justice System

3.0. Corrections As a Profession

7.0. Law Enforcement Techniques

8.0. Secure and Safeguard of Crime Scene

9.0. Testifying

10.0. Search Procedures – Persons

23.0. Control of Contraband

23.1. Control of Drug Use

23.2. Identification of Controlled/Abused Substance

23.3. Identification of Materials Used to Achieve Intoxication

23.4. Identification of Materials Used to Make Weapons

23.5. Procedure for Handling Contraband

24.0. Control of Movement Using Restraints

24.1. Identification of Restraints

24.2. Use of Restraints

28.0. Crisis Prevention/Inmate

29.0. Crisis Prevention/I.D. of Potential Problems

~~30.0. Crisis Prevention/I.D. of Mentally Disturbed Inmates~~

~~31.0. Conflict Management/Crisis Intervention~~

~~34.0. Enforcing Laws, Rules and Regulations~~

~~35.0. Enforcing Laws, Rules and Regulations - Behavior Adjustment~~

~~38.0. Enforcing Laws, Rules - Grievance~~

~~39.0. Use of Force~~

~~40.0. Use of Force - Defensive Tactics~~

~~41.0. Use of Force - Baton~~

~~42.0. Use of Force - Chemical Agents~~

~~43.0. Use of Force - Firearms~~

~~44.0. Emergency Preparedness and Response - Riot or Disturbance~~

~~45.0. Emergency Preparedness and Response~~

~~46.0. Emergency Preparedness and Response - Hostage~~

~~49.0. Inmate Supervision - Interpersonal Communications~~

~~50.0. Inmate Supervision - Providing Information~~

~~51.0. Inmate Supervision - Limitations~~

~~52.0. Inmate Supervision - Work/Recreation~~

~~.....TOTAL CORE CURRICULUM HOURS - 120~~

~~2. Sub-core curriculum (required for all correctional officers who, in the performance of duties, are required to transport inmates by vehicular means).~~

~~27.0. Vehicle Operation.~~

~~..... TOTAL SUB-CORE CURRICULUM HOURS - 16~~

~~..... TOTAL CURRICULUM HOURS - 216~~

B. Individuals hired as correctional officers as defined in § 53.1-1 of the Code of Virginia shall meet or exceed the compulsory minimum training standards at a certified [criminal justice] training academy [, external training location, or satellite facility] and complete field training requirements. Correctional officers shall comply with the following:

1. Successfully complete basic correctional officer training at a certified [criminal justice] training academy [, external training location,] or satellite facility, which includes receiving a minimum of 400 hours of department approved training in the following categories:

a. Security and supervision;

b. Communication;

c. Safety;

d. Emergency response;

e. Conflict and crisis management;

f. Law and legal;

g. Duty assignments and responsibilities;

h. Professionalism;

i. Basic corrections officer firearms training; and

j. Physical fitness training.

2. Successfully complete a minimum of 200 hours of approved training in the category of field training identified in the Virginia Department of Criminal Justice Services Field Training and On the Job Training Performance Outcomes.

6VAC20-100-25. Approval authority.

A. The board shall be the approval authority for the training categories and hours identified in 6VAC20-100-20 of the compulsory minimum training standards. Amendments to training categories shall be made in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Committee on Training (COT) shall be the approval authority for the performance outcomes, training objectives, criteria, and lesson plan guides that support the performance outcomes. Performance outcomes, training objectives, criteria, and lesson plan guides supporting the compulsory minimum training standards may be added, deleted, or amended by the COT based upon written recommendation of the director of the Department of Corrections, a chief of police, sheriff, agency administrator, academy director, or the Curriculum Review Committee.

C. Before approving changes to the performance outcomes, training objectives, criteria, or lesson plan guides, the COT shall schedule an opportunity for public comment during a meeting of the COT. A minimum of 60 days before [~~to~~] the meeting of the COT, the proposed changes shall be distributed to all certified training academies for an opportunity to comment. Notice of changes to the performance outcomes, training objectives, criteria, and lesson plan guides shall be filed for publication in the Virginia Register of Regulations.

D. The department shall notify each certified [criminal justice] training academy in writing of any COT approved revisions. COT approved revisions require a minimum of 30 days' notice to certified [criminal justice] training academies prior to becoming effective.

6VAC20-100-30. Applicability.

A. ~~Every~~ A person employed as a full-time or part-time correctional officer, ~~and who has not met the compulsory minimum training standards for correctional officers subsequent to the effective date of these regulations,~~ in accordance with subdivision 9 of § 9.1-102 of the Code of Virginia, shall meet the compulsory minimum training standards ~~herein~~ and requirements established in 6VAC20-100-20 and 6VAC20-100-40 unless provided otherwise in accordance with subsection B of this section.

B. The director may grant an exemption or partial exemption of the compulsory minimum training standards established [~~herein~~ in 6VAC20-100-20 and 6VAC20-100-40], in accordance with ~~§ 9-173~~ § 9.1-116 of the Code of Virginia.

6VAC20-100-40. Time requirement for completion of training.

A. ~~Every correctional officer~~ Correctional officers who ~~is~~ are required to comply with the compulsory minimum training standards [, field training, and requirements] shall satisfactorily complete such training within 12 months of the date of appointment unless provided otherwise in accordance with subsection B of this section.

B. The director may grant an extension of the time limit for completion of the compulsory minimum training ~~required upon presentation of evidence by the agency administrator that the officer was unable to complete the required training within the specified time limit due to illness, injury, military service or special duty assignment required and performed in the public interest. However, each agency administrator shall request such extension prior to expiration of any time limit.~~ standards and requirements for the following reasons:

1. Medical condition;

2. Injury;

3. Military service; or

4. Administrative leave involving the determination of worker's compensation or disability retirement issues or suspension pending investigation or adjudication of a crime.

C. ~~Any correctional officer~~ The director may review and consider other reasons (e.g., natural disaster, family medical leave, etc.) for granting an extension. If approval is granted, the extension shall not exceed 90 days.

D. [The director or director's designee may review and consider requests to renew training extensions if the reason for the original training extension continues and the request occurs before the expiration date of the original extension.

E.] The director shall not grant an extension for failing to pass compulsory minimum training standards within the specified time limits.

[~~E.~~ F.] Correctional officers who do not [satisfactorily complete compulsory minimum training standards, field training, and other requirements within 12 months of hire or appointment as a correctional officer, or who do not] receive an extension of the time limit for completion of requirements shall be subject to the provisions of § 9.1-115 of the Code of Virginia.

[~~F.~~ G.] The department shall notify the agency administrator of individuals not in compliance with the requirements of this section.

[~~G.~~ H.] Correctional officers who originally complied with all training requirements and later separated from correctional officer status~~, more than 12 months but less than~~ for a period of 24 months or less, upon reentry as a correctional officer, will be required to complete ~~all compulsory minimum training standards set forth in 6VAC20-100-20 A 1~~ in-service and firearms training requirements set forth in 6VAC20-30.

~~D. Any correctional officer~~ [~~H.~~ I.] Correctional officers who originally complied with all training requirements and later separated from correctional officer status [~~,~~] ~~in excess of~~ for a period greater than 24 months, upon reentry as a correctional officer [,] shall be required to complete all compulsory minimum training standards ~~unless provided otherwise in accordance with 6VAC20-100-20 A 1~~ required for correctional officers as set forth in this chapter.

6VAC20-100-50. ~~How minimum training may be attained.~~ (Repealed.)

~~A. The compulsory minimum training standards shall be attained by attending and satisfactorily completing an approved training school.~~

~~B. Officers attending an approved training school are required to be present for all classes and should not be placed on duty or on call except in cases of emergency. In the event of such an emergency, the agency administrator shall advise the school director within 24 hours. Officers will be responsible for any material missed during an excused absence.~~

~~C. All approved training schools which begin on or after January 1, 1989, shall be conducted in conformance with the Rules Relating to Compulsory Minimum Training Standards for Correctional Officers of the Department of Corrections, Division of Adult Institutions, as adopted by the board on October 7, 1987. However, the period January 1, 1988, through December 31, 1988, shall serve as a transition period wherein training schools may be approved by the department to conduct training in accordance with the Rules Relating to Compulsory Minimum Training Standards For Correctional Officers of the Department of Corrections, Division of Institutional Services, as amended by the board on February 12, 1982, or according to the Rules Relating to Compulsory Minimum Training Standards for Correctional Officers of the Department of Corrections, Division of Adult Institutions, as~~

~~adopted by the board on October 7, 1987. Every correctional officer satisfactorily completing training approved by the department under the rules amended February 12, 1982, or under the rules adopted on October 7, 1987, shall be deemed to have complied with the compulsory minimum training standards for correctional officers.~~

6VAC20-100-60. ~~Approved training schools.~~ (Repealed.)

~~A. Correctional officer training schools shall be approved by the department prior to the first scheduled class. Approval is requested by making application to the director on forms provided by the department. The director may approve those schools, which, on the basis of curricula, instructors, facilities and examinations provide the required minimum training. One application for all mandated training shall be submitted prior to the beginning of each fiscal year. A curriculum listing performance objective by number, the instructors, dates, and times for the entire proposed session shall be submitted to the department 30 days prior to the beginning of each such proposed session. An exemption to the 30 day requirement may be granted for good cause shown by the school director.~~

~~B. Each school director shall be required to maintain a file of all lesson plans and supporting material for each subject contained in the compulsory minimum training standards.~~

~~C. Schools which are approved shall be subject to inspection and review by the director or staff.~~

~~D. The department may suspend the approval of an approved training school upon written notice, which shall contain the reason(s) upon which the suspension is based, to the school's director. The school's director may request a hearing before the director or his designee. The request shall be in writing and must be received by the department within 15 days of the date of the notice of suspension. The school's director may appeal the decision of the director or his designee to the board. Such request shall be in writing and must be received by the board within 15 days of the date of the decision of the director or his designee.~~

~~E. The department may revoke the approval of an approved training school upon written notice, which shall contain the reason(s) upon which the revocation is based, to the school's director. The school's director may request a hearing before the director or his designee. The request shall be in writing and must be received by the department within 15 days of the date of the notice of revocation. The school's director may appeal the decision of the director or his designee to the board. Such request shall be in writing and must be received by the board within 15 days of the date of the decision of the director or his designee.~~

6VAC20-100-70. ~~Grading~~ Attendance, requirements, testing, and grading.

~~A. Each officer shall comply with the requirements of all the performance objectives set forth in 6VAC20-100-20 and the document entitled, "Performance Based Training and Testing Objectives for Compulsory Minimum Training for Correctional Officers of the State Department of Corrections, Division of Adult Institutions" (June, 1986). All approved training schools shall utilize testing procedures which indicate that every officer, prior to satisfactory completion of the training school, has met the requirements set forth in each performance objective specified in the document entitled, "Performance Based Training and Testing Objectives for Compulsory Minimum Training for Correctional Officers of the State Department of Corrections, Division of Adult Institutions" (June, 1986). An [officer may be tested and retested as may be necessary within the time limits of 6VAC20-100-40 and in accordance with each academy's written policy. An officer shall not be certified as having complied with the compulsory minimum training standards unless all applicable requirements have been met.]~~

~~B. The school director shall submit a grade report on each officer on forms provided by the department.~~

~~C. The following firearms training will be required for each officer attending an approved school:~~

~~1. Nomenclature and care of service revolver;~~

~~2. Safety (on the firearms range, on duty and off duty);~~

~~3. Legal responsibilities and liabilities of firearms;~~

~~4. Service revolver (handling, firing principles);~~

~~5. Dry firing and application of basic shooting principles;~~

~~6. Prequalification shooting (60 rounds, minimum);~~

~~7. Basic Correctional Firearms Qualification Course — Minimum 70% qualification required~~

~~8. Shotgun Qualification Course — Minimum 80% qualification required~~

~~9. Special Weapons Qualification Courses — Minimum 80% qualification required~~

~~a. .223 caliber mini-14 rifle~~

~~b. AR-15 semi-automatic rifle~~

A. Attendance.

1. Correctional officers attending approved training are required to attend all classes and shall not be placed on duty or on call except in cases of an emergency (e.g., natural disaster, etc.) [.] In the event of such an emergency, the agency administrator or designee shall determine if it is appropriate to place officers on duty or on call and shall advise the academy director within 24 hours.

2. Correctional officers shall be responsible for any material missed during an excused absence.

B. Academy testing.

1. Correctional officers shall meet all the training objectives and pass all criteria for testing related to each performance outcome approved by the COT.

2. A correctional [officer may be tested and retested within the time limits of 6VAC20-100-40 and in accordance with each certified criminal justice training academy's written policy. An officer shall not be certified as having complied with the compulsory minimum training standards unless all requirements have been met.]

6VAC20-100-80. Failure to comply with rules and regulations.

~~Any correctional officer~~ A. Any individual attending ~~an approved training school~~ a certified [criminal justice] training academy shall comply with the rules and regulations promulgated by the department and board ~~and any other rules and regulations within the authority of the school director~~. The ~~school~~ academy director shall be responsible for enforcement of all rules and regulations established to govern the conduct of attendees.

~~If the school director considers a violation of~~ B. Any individual violating the rules and regulations governing the certified [criminal justice] training academy determined to be detrimental to the welfare of ~~the school, the school director~~ the certified [criminal justice] training academy or the safety of officers, visitors, or personnel may ~~expel the officer~~ be expelled from the ~~school~~ academy.

C. Notification of ~~such action shall~~ an expulsion will immediately be reported, in writing, to the ~~corrections facility director manager of the officer and the director~~ agency administrator or designee and the department.

6VAC20-100-90. Administrative requirements.

~~A. Reports shall be required from the agency administrator and school director on forms approved or provided by the department and at such times as designated by the director.~~

~~B. The school director shall, within 30 days upon completion of an approved training school session, comply with the following:~~

~~1. Prepare a grade report on each officer maintaining the original for academy records and forwarding a copy to the corrections facility director/manager of the officer.~~

~~2. Submit to the department a roster containing the names of those officers who have satisfactorily completed all training requirements and, if applicable, a revised curriculum for the training session.~~

~~C. The school director shall furnish each instructor with the applicable performance objectives for the assigned subject matter.~~

~~D. Approved correctional officer training schools shall maintain accurate records of all tests, grades and testing procedures.~~

A. [Field training shall be completed in accordance with the requirements in 6VAC20-100-40. The superintendent or warden shall sign and submit the field training completion form for each officer to the department.

B.] Records and documentation shall be open to audit, inspection, and review by the department upon request.

[~~B.~~ C.] Training ~~school~~ records shall be maintained in accordance with the provisions of ~~these rules~~ this chapter and the Virginia Public Records Act [~~§§~~ (§] 42.1-76 ~~through 42.1-91~~ et seq. of the Code of ~~Virginia~~ Virginia).

6VAC20-100-100. ~~Effective date.~~ (Repealed.)

~~These regulations shall be effective on and after January 1, 1988, and until amended or repealed.~~

6VAC20-100-110. ~~Recision of previous rules.~~ (Repealed.)

~~The Rules Relating to Compulsory Minimum Training Standards for Correctional Officers of the Department of Corrections, Division of Institutional Services, as amended on February 12, 1982, are hereby rescinded effective January 1, 1989.~~

NOTICE: The following forms used in administering the regulation were 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 (6VAC20-100)

~~Application for Exemption From Virginia Compulsory Minimum Training Standards, Form W-2, eff. 1/91.~~

~~Criminal Justice Training Roster, Form 41, eff. 1/93.~~

[~~Application for Exemption from Virginia Compulsory Minimum Training Standards, Form W-2 (rev. 5/2018)~~

Field Training: Department of Corrections Basic Corrections Officer, DOC-1 (rev. 8/2018)]

DOCUMENTS INCORPORATED BY REFERENCE (6VAC20-100)

Virginia Department of Criminal Justice Services Field Training and On the Job Training Performance Outcomes, published September 2012, Virginia Department of Criminal Justice Services (Revised January 2018)

VA.R. Doc. No. R18-5427; Filed May 21, 2019, 4:42 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 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. 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: **8VAC20-23. Licensure Regulations for School Personnel (amending 8VAC20-23-630).**

Statutory Authority: §§ 22.1-298.1 and 22.1-299 of the Code of Virginia.

Effective Date: July 10, 2019.

Agency Contact: Patty Pitts, Assistant Superintendent for Teacher Education and Licensure, Department of Education, 101 North 14th Street, Richmond, VA 23218, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

Summary:

The amendment restores a requirement for the Option II tract of the Division Superintendent License, which was inadvertently omitted, that an individual qualifying for licensure complete five years of educational experience in a public or an accredited nonpublic school, two years of which shall be successful, full-time teaching experience at the preK-12 level and two years of which shall be in administration and supervision at the preK-12 level.

8VAC20-23-630. Division Superintendent License.

An individual may be a candidate for the list of eligible division superintendents and the renewable Division Superintendent License through the completion of the requirements in one of the following four options:

1. Option I. The individual shall have:

a. Earned a doctorate degree in educational administration or educational leadership from a regionally accredited college or university; and

b. Completed five years of educational experience in a public or an accredited nonpublic school, two years of which shall be successful, full-time teaching experience at the preK-12 level and two years of which shall be in administration and supervision at the preK-12 level.

2. Option II. The individual shall have:

a. Earned a master's degree from a regionally accredited college or university and successfully completed 30 graduate semester hours beyond the conferral date of the master's degree; ~~and~~

b. Completed requirements for administration and supervision preK-12 endorsement that includes the demonstration of competencies in the following areas:

(1) Knowledge, understanding, and application of planning, assessment, and instructional leadership that builds collective professional capacity, including:

(a) Principles of student motivation, growth, and development as a foundation for age-appropriate and grade-appropriate curriculum, instruction, and assessment;

(b) Collaborative leadership in gathering and analyzing data to identify needs to develop and implement a school improvement plan that results in increased student learning;

(c) Planning, implementation, and refinement of standards-based curriculum aligned with instruction and assessment;

(d) Collaborative planning and implementation of a variety of assessment techniques, including examination of student work that yields individual, class, grade level, and school level data as a foundation for identifying existing competencies and targeting areas in need of further attention;

(e) Incorporation of differentiated and effective instruction that responds to individual learner needs, including appropriate response to cultural, ethnic, and linguistic diversity;

(f) Knowledge, understanding, and application of the federal and state regulatory requirements and expectations associated with identification, education, and evaluation of students with disabilities;

(g) Collaboratively working with parents and school personnel to ensure that students with disabilities are included as a valued part of the school community~~,~~ and that they receive effective and appropriately intensive instruction to assist them in meeting the standards set for all students, as well as individual goals outlined in their individualized education programs;

(h) Integration of technology in curriculum and instruction to enhance learner understanding;

(i) Identification, analysis, and resolution of problems using effective problem-solving techniques; and

(j) Development, articulation, implementation, and stewardship of a vision of excellence linked to mission and core beliefs that promote continuous improvement consistent with the goals of the school division.

(2) Knowledge, understanding, and application of leadership and organizations, including:

(a) The change process of systems, organizations, and individuals, using appropriate and effective adult learning models;

(b) Aligning organizational practice, division mission, and core beliefs for developing and implementing strategic plans;

(c) ~~Information~~ Understanding information sources and processing, including data collection and data analysis strategies;

(d) Using data as a part of ongoing program evaluation to inform and lead change;

(e) Developing a change management strategy for improved student outcomes;

(f) Developing distributed leadership strategies to create personalized learning environments for diverse schools; and

(g) ~~Effective~~ Practicing effective two-way communication skills including consensus building, negotiation, and mediation skills.

(3) Knowledge, understanding, and application of management and leadership skills that achieve effective and efficient organizational operations and sustain an instructional program conducive to student academic progress, including:

(a) Alignment of curriculum and instruction and assessment of the educational program to achieve high academic success at the school and division or district level;

(b) Principles and issues of supervising and leading others to ensure a working and learning climate that is safe, secure, and respectful of a diverse school community;

(c) Management decisions that ensure successful teaching and learning including, human resources management and development, theories of motivation, change in school culture, innovation and creativity, conflict resolution, adult learning, and professional development models;

(d) Knowledge, understanding, and application of Virginia's Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers and Virginia's Guidelines for Uniform Performance Standards and Evaluation Criteria for Principals;

(e) Principles and issues related to fiscal operations of school management;

(f) Principles and issues related to school facilities and use of space and time for supporting high-quality school instruction and student learning;

(g) Legal issues impacting school operations and management;

(h) Technologies that support management functions; and

(i) Application of data-driven decision making to initiate and continue improvement in school and classroom practices and student achievement.

(4) Knowledge, understanding, and application of the conditions and dynamics impacting a diverse school community, including:

(a) ~~Emerging~~ Recognizing emerging issues and trends within school and community relations;

(b) Working collaboratively with staff, families, and community members to secure resources and to support the success of a diverse population;

(c) Developing appropriate public relations and public engagement strategies and processes for building and sustaining positive relationships with families, caregivers, and community partners; and

(d) ~~Integration of~~ Integrating technology to support communication efforts.

(5) Knowledge, understanding, and application of the purpose of education and the role of professionalism in advancing educational goals, including:

(a) Philosophy of education that reflects commitment to principles of honesty, fairness, caring, and equity in day-to-day professional behavior;

(b) Integration of high-quality, content-rich, job-embedded professional learning that respects the contribution of all faculty and staff members in building a diverse professional learning community;

(c) Reflective understanding of moral and legal consequences of decision making in the school setting;

(d) Intentional and purposeful effort to model professional, moral, and ethical standards, as well as personal integrity in all interactions; and

(e) Intentional and purposeful effort to model continuous professional learning and to work collegially and collaboratively with all members of the school community to support the school's goals and enhance its collective capacity.

(6) Knowledge, understanding, and application of leadership theories and influences that impact schools, including:

(a) Concepts of leadership including systems theory, change theory, learning organizations, and current leadership theory;

(b) Ability to identify and respond to internal and external forces and influences on a school;

(c) Ability to identify and apply the processes of educational policy development at the state, local, and school level; and

(d) Ability to identify and demonstrate ways to influence educational policy development at the state, local, and school level; and

c. Completed five years of successful educational experience in a public or an accredited nonpublic school, two years of which must be full-time teaching experience at the preK-12 level and two years of which must be in administration and supervision.

3. Option III. The individual shall have:

a. Earned a master's degree from a regionally accredited college or university;

b. A current, valid out-of-state license with an endorsement as a division or district superintendent; and

c. Completed five years of successful educational experience in a public or an accredited nonpublic school, two years of which must be full-time teaching experience at the preK-12 level and two years of which must be in administration and supervision.

4. Option IV. The individual shall have:

a. Earned a master's degree or its equivalent from a regionally accredited college or university;

b. A minimum of three years of successful, full-time experience in a senior leadership position, such as chief executive officer or senior military officer; and

c. Be recommended by a Virginia school board interested in employing the individual as superintendent.

VA.R. Doc. No. R19-5862; Filed May 20, 2019, 1:26 p.m.

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TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **10VAC5-120. Money Order Sellers and Money Transmitters (amending 10VAC5-120-10, 10VAC5-120-20, 10VAC5-120-40 through 10VAC5-120-70; adding 10VAC5-120-35).**

Statutory Authority: §§ 12.1-13 and 6.2-1913 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: June 21, 2019.

Agency Contact: Dustin Physioc, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 786-0831, FAX (804) 371-9416, or email dustin.physioc@scc.virginia.gov.

Summary:

The proposed amendments implement Chapter 634 of the 2019 Acts of Assembly and require licensees to register with the Nationwide Multistate Licensing System and Registry (NMLS). Proposed amendments (i) require current licensees to transition to NMLS and for other persons seeking a license under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia to apply through NMLS; (ii) require licensees to maintain current information in NMLS records; (iii) clarify that licenses must be renewed annually between November 1 and December 31; (iv) replace existing reporting requirements with a requirement that licensees file quarterly call reports through NMLS along with information concerning their financial condition; (v) establish the time period within which licensees must file audited financial statements required by § 6.2-1905 D of the Code of Virginia; (vi) provide that the authorized delegate information referenced in § 6.2-1917 B of the Code of Virginia must be submitted through the NMLS agent reporting functionality; (vii) specify that the annual assessment is calculated using the information reported by licensees in quarterly call reports or other written reports required by the Commissioner of Financial Institutions; (viii) provide that if the Bureau of Financial Institutions requests information from an applicant to complete a deficient application and the information is not received within 60 days of the request, the application is deemed abandoned unless an extension of time is requested and approved prior to the expiration of the 60-day period; and (ix) make other technical changes for consistency and clarity.

AT RICHMOND, MAY 21, 2019

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2019-00016

Ex Parte: In re: Money Order Sellers
and Money Transmitters

ORDER TO TAKE NOTICE

Section 6.2-1913 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the purposes of Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia ("Chapter 19"). The Commission's regulations governing money order sellers and money transmitters who are licensed under Chapter 19 ("licensees") are set forth in Chapter 120 of Title 10 of the Virginia Administrative Code ("Chapter 120").

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to Chapter 120. The primary impetus for the proposed amendments is Chapter 634 of the 2019 Virginia Acts of Assembly, which will become effective on July 1, 2019, and require all licensees to register with the Nationwide Multistate Licensing System and Registry ("NMLS"). The proposed regulations set forth the requirements for current licensees to transition to NMLS and for other persons seeking licensure under Chapter 19 to submit their applications through NMLS. In addition, the proposal requires licensees to maintain current information in their NMLS records and clarifies that all licenses must be renewed annually between November 1 and December 31. The proposed regulations also: (i) replace the existing reporting requirements in subsections A and B of 10 VAC 5-120-40 with a requirement that licensees file quarterly call reports through NMLS along with information concerning their financial condition; (ii) prescribe the time period within which licensees must file the audited financial statements required by § 6.2-1905 D of the Code of Virginia; (iii) require the authorized delegate information specified in § 6.2-1917 B of the Code of Virginia to be submitted through the agent reporting functionality in NMLS; (iv) specify that the annual assessment will be calculated using the information reported by licensees in their quarterly call reports or other written reports that may be required by the Commissioner of Financial Institutions; and (v) provide that if the Bureau requests information from an applicant to complete a deficient application and such information is not received within 60 days of the Bureau's request, the application will be deemed abandoned unless an extension of time is requested and approved prior to the expiration of the 60-day period. Various technical and conforming amendments have also been proposed.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with a proposed effective date of July 1, 2019.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations are appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before June 21, 2019. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2019-00016. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(3) This Order and the attached proposed regulations shall be posted on the Commission's website at http://www.scc.virginia.gov/case.

(4) The Commission's Division of Information Resources shall provide a copy of this Order, including a copy of the attached proposed regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send by e-mail or U.S. mail a copy of this Order, together with a copy of the proposed regulations, to all licensed money order sellers and money transmitters, and such other interested parties as he may designate.

10VAC5-120-10. Definitions.

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

"Authorized delegate," "licensee," "monetary value," "money order," and "outstanding" shall have the meanings ascribed to them in § 6.2-1900 of the Code of Virginia.

"Bureau," "commission," and "commissioner" shall have the meanings ascribed to them in § 6.2-100 of the Code of Virginia.

"Chapter 19" means Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

"Generally accepted accounting principles" for purposes of Chapter 19 and this chapter means standard accounting

guidelines as established and administered by the American Institute of Certified Public Accountants (AICPA) and the United States Financial Accounting Standards Board (FASB).

"Merchant or service provider" means a person engaged in the business of selling goods or services, but excluding a person licensed or required to be licensed under Chapter 19.

"Money transmission" for purposes of Chapter 19 and this chapter shall have the meaning ascribed to it in § 6.2-1900 of the Code of Virginia. However, the term shall not include the actions of an agent who collects funds on behalf of a merchant or service provider, provided that (i) the agent has been explicitly designated in a written agreement as an agent of the merchant or service provider; (ii) any funds collected by the agent shall be deemed for all purposes to be received by the merchant or service provider, regardless of whether the agent actually remits such funds to the merchant or service provider; (iii) the agent provides the Virginia resident with a dated receipt indicating that payment to the agent constitutes payment to the merchant or service provider; and (iv) there is no risk of loss to the Virginia resident if the agent fails to remit such resident's funds to the merchant or service provider. This definition shall not be construed to prohibit the merchant or service provider from seeking indemnification from its agent for any direct losses incurred due to the agent's failure to remit funds in accordance with its agreement.

~~"Reporting period" means a calendar quarter, the first six months of a calendar year, or the last six months of a calendar year, as the case may be.~~

"Nationwide Multistate Licensing System and Registry" and "registry" shall have the meanings ascribed to them in § 6.2-1900 of the Code of Virginia.

"Senior officer" for purposes of Chapter 19 means an individual who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including ~~but not limited to~~ its compliance with applicable laws and regulations.

10VAC5-120-20. Surety bond standards.

A. Every licensee shall be bonded in a principal amount determined by the Commissioner of Financial Institutions. The bond amount shall be equal to the licensee's Virginia average monthly money order sales during the preceding two ~~reporting periods~~ calendar quarters, or its Virginia average monthly money transmission volume during such periods, or both, as applicable, rounded to the next highest multiple of $10,000, but not exceeding $500,000. The commissioner, however, may increase the amount of bond required to a maximum of $1 million upon the basis of the impaired financial condition of a licensee, as evidenced by net worth reduction, financial losses, or other relevant criteria.

B. The amount of bond required of a new licensee shall be based upon the applicant's financial condition, capitalization, projected Virginia monthly money order sales and money transmission volume, experience, and other factors deemed pertinent.

C. The minimum bond required shall be $25,000.

D. The form of the bond will be prescribed and provided by the commissioner. The required bond shall be submitted prior to the issuance of a license~~,~~ and shall be maintained continuously thereafter as long as the licensee or former licensee has money orders outstanding or unfulfilled money transmission agreements.

10VAC5-120-35. Nationwide Multistate Licensing System and Registry.

A. Applications for a license under Chapter 19 shall be made through the registry in accordance with instructions provided by the commissioner. The commissioner may provide these instructions through the registry, on the commission's Internet website, or by any other means the commissioner deems appropriate.

B. Every licensee holding a license under Chapter 19 prior to July 1, 2019, shall register with the registry and file through the registry a transition request for its license under Chapter 19 no later than September 1, 2019.

C. Every licensee shall maintain current information in its records with the registry. Except as otherwise required by Chapter 19 or this chapter, a licensee shall update its information as soon as is practicable, but in no event later than 10 business days from when a change takes effect.

D. A license issued under Chapter 19 shall expire on December 31 of each calendar year unless it is renewed by a licensee on or after November 1 of the same year. However, licenses that are granted between November 1 and December 31 shall not expire until the end of the following calendar year. A license shall be renewed upon the commissioner finding that the licensee has satisfied the requirements set forth in subsection F of § 6.2-1905 of the Code of Virginia.

10VAC5-120-40. Reporting and filing requirements.

A. ~~1. Licensees licensed for less than three years shall file reports with the commissioner within 45 days after the end of each calendar quarter.~~

~~2. Licensees licensed for three years or longer shall file reports with the commissioner within 45 days after the end of each semiannual reporting period.~~

~~3. Licensees affiliated by common ownership with another licensee licensed for three years or longer, and licensees that acquire all or part of the money order sales business or money transmission business of another licensee licensed for three years or longer, shall file reports with the~~

~~commissioner within 45 days after the end of each semiannual reporting period.~~

Pursuant to subsection D of § 6.2-1905 of the Code of Virginia, every licensee shall file quarterly call reports through the registry as well as such other information pertaining to the licensee's financial condition as may be required by the registry. Reports shall be in such form, contain such information, and be submitted with such frequency and by such dates as the registry may require. Compliance with this subsection shall satisfy the requirement in subsection B of § 6.2-1917 of the Code of Virginia that a licensee file its quarterly financial statements with the commissioner.

B. ~~Licensees shall file a report of outstandings and permissible investments with the commissioner within 45 days after the end of each calendar quarter.~~

~~C.~~ Within one business day after a licensee becomes aware of the occurrence of any of the following events, the licensee shall file a written report with the commissioner describing the event:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.

2. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.

3. Any local, state, or federal governmental authority (i) revokes or suspends the licensee's money order seller license, money transmitter license, or other license for a similar business; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its money order sales, money transmission, or similar business; or (iii) takes any other action against the licensee relating to its money order sales, money transmission, or similar business where the total amount of restitution or other payment from the licensee exceeds $20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.

4. Based on allegations by any local, state, or federal governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed money order sales, money transmission, or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

5. The licensee surrenders its money order seller license, money transmitter license, or other license for a similar business in another state in lieu of threatened or pending license revocation; license suspension; or other administrative, regulatory, or enforcement action.

6. The licensee is denied a money order seller license, money transmitter license, or other license for a similar business in another state.

7. The licensee or any of its members, partners, directors, officers, principals, employees, or authorized delegates is indicted or convicted of a felony.

~~D.~~ C. The reports required by this section shall contain such information as the commissioner may require. The commissioner may require such additional reports as he deems necessary.

D. Every licensee shall file the audited financial statements required by subsection D of § 6.2-1905 of the Code of Virginia within 105 days of the end of its fiscal year. For example, if a licensee's fiscal year ends on March 31, its audited financial statements must be filed by July 14 of the same year. If a licensee is unable to file its audited financial statements within 105 days of the end of its fiscal year, the licensee may request an extension, which may be granted by the commissioner for good cause shown. A licensee's audited financial statements shall cover the prior 12-month fiscal period and be prepared in accordance with generally accepted accounting principles.

E. The authorized delegate information required by subsection B of § 6.2-1917 of the Code of Virginia shall be submitted to the commissioner through the registry's agent reporting functionality.

F. Any reports, notifications, or filings required by Chapter 19 or this chapter may be submitted to the commissioner through the registry, provided that the registry is capable of receiving such reports, notifications, or filings.

10VAC5-120-50. Assessment schedule for the examination and supervision of money order sellers and money transmitters.

Pursuant to subsection B of § 6.2-1905 of the Code of Virginia, the commission sets the following schedule for the annual assessment to be paid by persons licensed under Chapter 19. The assessment defrays the costs of the examination and supervision of licensees by the bureau.

The annual assessment shall be $0.000047 per dollar of money orders sold and money transmitted by a licensee pursuant to Chapter 19. The assessment shall be based on the dollar volume of business conducted by a licensee, either directly or through its authorized delegates, during the calendar year preceding the year of the assessment as reported by each licensee in (i) the quarterly call reports filed through the registry or (ii) such other written reports as the commissioner may require pursuant to subsection D of § 6.2-1905 of the Code of Virginia. If a licensee fails to fully report its volume information for the prior calendar year by the

assessment date, a provisional fee subject to adjustment when the information is reported, shall be assessed.

The amount calculated using the ~~above~~ schedule in this section shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before August 1 for the current calendar year. The assessment shall be paid by licensees on or before September 1.

~~The annual report, due April 15 each year, of each licensee provides the basis for its assessment. In cases where a license has been granted between January 1 and April 15 of the year of the assessment, the licensee's initial annual assessment shall be $0.~~

Fees prescribed and assessed pursuant to this schedule are apart from~~,~~ and do not include~~,~~ the following: (i) the annual license renewal fee of $750 authorized by subsection A of § 6.2-1905 of the Code of Virginia and (ii) the reimbursement for expenses authorized by subsection C of § 6.2-1905 of the Code of Virginia.

10VAC5-120-60. Responding to requests from the Bureau of Financial Institutions; providing false, misleading, or deceptive information.

A. When the bureau requests a written response, books, records, documentation, or other information from a licensee or its authorized delegate in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws and regulations, the licensee or authorized delegate shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee or its authorized delegate to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information~~,~~ and such other factors as the bureau determines to be relevant under the circumstances. Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the bureau's investigation and examination authority provided for in § 6.2-1910 of the Code of Virginia.

B. A licensee shall not provide any false, misleading, or deceptive information to the bureau.

C. If the bureau requests information from an applicant to complete a deficient application filed under § 6.2-1903 or 6.2-1914 of the Code of Virginia, and the information is not received within 60 days of the request, the application shall be deemed abandoned unless a request for an extension of time is received and approved by the bureau prior to the expiration of the 60-day period.

10VAC5-120-70. Acquisitions; additional business requirements and restrictions; operating rules.

A. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under Chapter 19 shall pay a nonrefundable application fee of $500.

B. A licensee shall not permit an authorized delegate to designate or appoint a subdelegate to sell money orders or engage in money transmission business.

C. ~~The audited financial statements filed by a licensee pursuant to § 6.2-1905 D of the Code of Virginia shall cover the prior 12-month fiscal period and be prepared in accordance with generally accepted accounting principles.~~

~~D. Quarterly financial statements filed by a licensee pursuant to § 6.2-1917 B of the Code of Virginia shall be consolidated and prepared in accordance with generally accepted accounting principles.~~

~~E.~~ A licensee shall comply with Chapter 19, this chapter, and all other state and federal laws and regulations applicable to the conduct of its business. For purposes of Chapter 19 and this chapter, the acts and omissions of a licensee's authorized delegates shall be deemed acts and omissions of such licensee.

~~F.~~ D. In addition to the records specified in subsection B of § 6.2-1916 ~~B~~ of the Code of Virginia, a licensee shall maintain in its principal place of business such other books, accounts, and records as the commissioner may reasonably require in order to determine whether such licensee is complying with the provisions of Chapter 19, this chapter, and other laws and regulations applicable to the conduct of its business.

~~G.~~ E. If a licensee, authorized delegate, or former licensee disposes of records containing a consumer's personal financial information or copies of a consumer's identification documents, such records and copies shall be shredded, incinerated, or otherwise disposed of in a secure manner. A licensee, authorized delegate, or former licensee may arrange for service from a business record destruction vendor.

~~H.~~ F. A licensee or former licensee shall provide the following information to the bureau within 10 days after such person's license is surrendered or revoked or the licensed business is otherwise closed: (i) the names, addresses, telephone numbers, fax numbers, and email addresses of a designated contact person and the person who consumers may contact regarding outstanding money orders or money transmission transactions; (ii) the location of the licensee's or former licensee's money order and money transmission records; and (iii) any additional information that the bureau

may reasonably require. A licensee or former licensee shall maintain current information with the bureau until the licensee or former licensee has no outstanding money orders and money transmission transactions.

~~I.~~ G. A person shall remain subject to the provisions of Chapter 19 and this chapter applicable to licensees in connection with all money orders sold and money or monetary value received for transmission while licensed under Chapter 19 notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered or revoked; or

2. The person ceases selling money orders or transmitting money or monetary value.

~~J.~~ H. A licensee shall not provide any information to a Virginia resident that is false, misleading, or deceptive.

~~K.~~ I. A licensee shall not engage in any activity that directly or indirectly results in an evasion of the provisions of Chapter 19 or this chapter.

~~L.~~ J. A licensee shall continuously maintain the requirements and standards for licensure prescribed in § 6.2-1906 of the Code of Virginia.

VA.R. Doc. No. R19-6009; Filed May 22, 2019, 11:40 a.m.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health 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 Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-410. Regulations for the Licensure of Hospitals in Virginia (amending 12VAC5-410-230).**

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: July 10, 2019.

Agency Contact: Robert Payne, Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-2109, FAX (804) 527-4502, or email robert.payne@vdh.virginia.gov.

Summary:

Pursuant to Chapters 271 and 682 of the 2018 Acts of Assembly, the amendments establish a protocol requiring that, before a health care provider arranges for air medical transportation services for a patient who does not have an emergency medical condition, the hospital shall provide the patient or authorized representative with written or electronic notice that the patient (i) may have a choice of transportation by an air medical transportation provider or medically appropriate ground transportation by an emergency medical services provider and (ii) will be responsible for charges incurred for such transportation in the event that the provider is not a contracted network provider of the patient's health insurance carrier or such charges are not otherwise covered in full or in part by the patient's health insurance plan.

12VAC5-410-230. Patient care management.

A. All patients shall be under the care of a member of the medical staff.

B. Each hospital shall have a plan that includes effective mechanisms for the periodic review and revision of patient care policies and procedures.

C. Each hospital shall establish a protocol relating to the rights and responsibilities of patients based on Joint Commission on Accreditation of Healthcare Organizations' 2000 Hospital Accreditation Standards, January 2000. The protocol shall include a process reasonably designed to inform patients of their rights and responsibilities. Patients shall be given a copy of their rights and responsibilities upon admission.

D. No medication or treatment shall be given except on the signed order of a person lawfully authorized by state statutes.

1. Hospital personnel, as designated in medical staff bylaws, rules and regulations, or hospital policies and procedures, may accept emergency telephone and other verbal orders for medication or treatment for hospital patients from physicians and other persons lawfully authorized by state statute to give patient orders.

2. As specified in the hospital's medical staff bylaws, rules and regulations, or hospital policies and procedures, emergency telephone and other verbal orders shall be signed within a reasonable period of time not to exceed 72 hours, by the person giving the order, or, when such person is not available, cosigned by another physician or other person authorized to give the order.

E. Each hospital shall have a reliable method for identification of each patient, including newborn infants.

F. Each hospital shall include in its visitation policy a provision allowing each adult patient to receive visits from any individual from whom the patient desires to receive visits, subject to other restrictions contained in the visitation policy including the patient's medical condition and the number of visitors permitted in the patient's room simultaneously.

G. Each hospital that is equipped to provide life-sustaining treatment shall develop a policy to determine the medical or ethical appropriateness of proposed medical care, which shall include:

1. A process for obtaining a second opinion regarding the medical and ethical appropriateness of proposed medical care in cases in which a physician has determined proposed care to be medically or ethically inappropriate;

2. Provisions for review of the determination that proposed medical care is medically or ethically inappropriate by an interdisciplinary medical review committee and a determination by the interdisciplinary medical review committee regarding the medical and ethical appropriateness of the proposed health care of the patient;

3. Requirements for a written explanation of the decision of the interdisciplinary medical review committee, which shall be included in the patient's medical record; and

4. Provisions to ensure the patient, the patient's agent, or the person authorized to make the patient's medical decisions in accordance with § 54.1-2986 of the Code of Virginia is informed of the patient's right to obtain the patient's medical record and the right to obtain an independent medical opinion and afforded reasonable opportunity to participate in the medical review committee meeting.

The policy shall not prevent the patient, the patient's agent, or the person authorized to make the patient's medical decisions from obtaining legal counsel to represent the patient or from seeking other legal remedies, including court review, provided that the patient, the patient's agent, person authorized to make the patient's medical decisions, or legal counsel provide written notice to the chief executive officer of the hospital within 14 days of the date of the physician's determination that proposed medical treatment is medically or ethically inappropriate as documented in the patient's medical record.

H. Each hospital shall establish a protocol requiring that, before a health care provider arranges for air medical transportation services for a patient who does not have an emergency medical condition as defined in 42 USC § 1395dd(e)(1), the hospital shall provide the patient or the patient's authorized representative with written or electronic notice that the patient (i) may have a choice of transportation by an air medical transportation provider or medically appropriate ground transportation by an emergency medical services provider and (ii) will be responsible for charges incurred for such transportation in the event that the provider is not a contracted network provider of the patient's health insurance carrier or such charges are not otherwise covered in full or in part by the patient's health insurance plan.

VA.R. Doc. No. R19-5817; Filed May 21, 2019, 8:26 a.m.

TITLE 17. LIBRARIES AND CULTURAL RESOURCES

BOARD OF HISTORIC RESOURCES

Fast-Track Regulation

Title of Regulation: **17VAC5-11. Public Participation Guidelines (amending 17VAC5-11-50).**

Statutory Authority: §§ 2.2-4007.02 and 10.1-2205 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 10, 2019.

Effective Date: July 25, 2019.

Agency Contact: Stephanie Williams, Deputy Director, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23229, telephone (804) 482-6082, FAX (804) 367-2391, or email stephanie.williams@dhr.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 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 the regulation to the statute. Therefore, there is no controversy in its promulgation.

Substance: The board has amended subsection A of 17VAC5-11-50 to include a requirement for the board to afford interested persons an opportunity to present their views and be accompanied by and represented by counsel or other representative in the promulgation of any regulatory action.

Issues: Other than conformity and consistency between law and regulation, there are no primary advantages and disadvantages to the public in implementing the amended provisions, since it is already in the Code of Virginia. There are no primary advantages and disadvantages to the agency or the Commonwealth. There are no 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 of Historic Resources (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 Department of Historic Resources on behalf of the Board of Historic Resources concurs with the Department of Planning and Budget's 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.

17VAC5-11-50. 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. R19-5758; Filed May 17, 2019, 9:32 a.m.

DEPARTMENT OF HISTORIC RESOURCES

Fast-Track Regulation

Title of Regulation: **17VAC10-11. Public Participation Guidelines (amending 17VAC10-11-50).**

Statutory Authority: §§ 2.2-4007.02 and 10.1-2202 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 10, 2019.

Effective Date: July 25, 2019.

Agency Contact: Stephanie Williams, Deputy Director, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6082, or email stephanie.williams@dhr.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 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 department 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 the regulation to the statute. Therefore, there is no controversy in its promulgation. The action conforms the department's regulation to Chapter 795 of the 2012 Acts of Assembly.

Substance: The department has amended subsection A of 17VAC10-11-50 to include a requirement for the department to afford interested persons an opportunity to present their views and be accompanied by and represented by counsel or other representative in the promulgation of any regulatory action.

Issues: Other than conformity and consistency between law and regulation, there are no primary advantages and disadvantages to the public in implementing the amended provisions, since it is already in the Code of Virginia. There are no primary advantages and disadvantages to the agency or the Commonwealth. There are no 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 Virginia Department of Historic Resources (Department) 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

Department 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.

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

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

17VAC10-11-50. 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. R19-5759; Filed May 17, 2019, 9:35 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Final 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.

Effective Date: August 1, 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.

Summary:

The 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.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

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 May 15, 2019, 11:39 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board for Contractors is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board for Contractors will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-140, 18VAC50-22-170).**

Statutory Authority: §§ 54.1-201, 54.1-1102, and 54.1-1146 of the Code of Virginia.

Effective Date: August 1, 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.

Summary:

The amendments extend a temporary reduction in fees for contractor license renewal and reinstatement applications received on or before August 31, 2021, to comply with § 54.1-113 of the Code of Virginia. Without this regulatory action, the fees would revert to higher, permanent fees on September 1, 2019.

18VAC50-22-140. Renewal fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable.

In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C renewal	with renewal application	$195
Class B renewal	with renewal application	$225

Class A renewal	with renewal application	$240
Residential Building Energy Analyst Firm renewal	with renewal application	$195

The date on which the renewal fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for renewal or must apply for reinstatement.

For renewal fees received on or before August 31, ~~2019~~ 2021, the fees shall be ~~$100~~ $165 for a Class C renewal, ~~$125~~ $195 for a Class B renewal, and ~~$150~~ $210 for a Class A renewal.

18VAC50-22-170. Reinstatement fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C reinstatement	with reinstatement application	$405*
Class B reinstatement	with reinstatement application	$460*
Class A reinstatement	with reinstatement application	$490*
Residential Building Energy Analyst Firm reinstatement	with reinstatement application	$405*

*Includes renewal fee listed in 18VAC50-22-140.

The date on which the reinstatement fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the entry requirements in place at the time of that application. In order to ensure that licensees are qualified to practice as contractors, no reinstatement will be permitted once two years from the expiration date of the license have passed.

For reinstatement fees received on or before August 31, ~~2019~~ 2021, the fees shall be ~~$200~~ $330 for Class C reinstatement, ~~$250~~ $390 for Class B reinstatement, and ~~$300~~ $420 for Class A reinstatement. These fees include the renewal fee listed in 18VAC50-22-140.

VA.R. Doc. No. R19-6000; Filed May 21, 2019, 12:27 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board for Contractors is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board for Contractors will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-120, 18VAC50-30-130).**

Statutory Authority: §§ 54.1-201, 54.1-1102, and 54.1-1146 of the Code of Virginia.

Effective Date: August 1, 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.

Summary:

The amendments extend a temporary reduction in fees for individual contractor license or certification renewal and reinstatement applications received on or before August 31, 2021, to comply with § 54.1-113 of the Code of Virginia. Without this regulatory action, the fees would revert to higher, permanent fees on September 1, 2019.

18VAC50-30-120. Renewal.

A. Licenses issued under this chapter to electricians, gas fitters, HVAC tradesmen, or plumbers shall expire three years from the last day of the month in which they were issued as indicated on the license.

B. All other licenses and certification cards issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the license or certification card.

C. Effective with all licenses issued or renewed after December 31, 2007, as a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical, and heating ventilation and cooling shall be required to satisfactorily complete three hours of continuing education for each designation, and individuals holding licenses as liquefied

petroleum gas fitters and natural gas fitter providers, one hour of continuing education, relating to the applicable building code, from a provider approved by the board in accordance with the provisions of this chapter. An inactive tradesman is not required to meet the continuing education requirements as a condition of renewal.

D. Certified elevator mechanics and certified accessibility mechanics, as a condition of renewal or reinstatement and pursuant to § 54.1-1143 of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Uniform Statewide Building Code pertaining to elevators, escalators, and related conveyances. This continuing education will be from a provider approved by the board in accordance with the provisions of this chapter.

E. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to § 54.1-1129.1 B of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board in accordance with the provisions of this chapter.

F. Renewal fees are as follows:

Tradesman license	$135
Liquefied petroleum gas fitter license	$90
Natural gas fitter provider license	$90
Backflow prevention device worker certification	$90
Elevator mechanic certification	$90
Certified accessibility mechanic	$90
Water well systems provider certification	$90
Residential building energy analyst license	$90

All fees are nonrefundable and shall not be prorated.

~~For~~ Tradesman license renewal fees received on or before August 31, ~~2019~~ 2021, ~~the fee~~ shall be ~~$60~~ $115. For all other renewal fees received on or before August 31, 2021, the fee shall be $75.

G. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a photocopy of the tradesman license or backflow prevention device worker certification card may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

H. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

I. The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

J. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

K. Residential building energy analysts, as a condition of renewal or reinstatement, shall provide documentation of continued membership, in good standing, of a certifying organization approved by the board and proof of insurance as required in 18VAC50-30-40 I 4.

18VAC50-30-130. Reinstatement.

A. Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees within 30 days of the expiration date, the regulant will be required to apply for reinstatement of the license or certification card.

B. Reinstatement fees are as follows:

Tradesman license	$185*
Liquefied petroleum gas fitter license	$140*
Natural gas fitter provider license	$140*
Backflow prevention device worker certification	$140*
Elevator mechanic certification	$140*
Certified accessibility mechanic	$140*
Water well systems provider certification	$140*
Residential building energy analyst license	$140*

*Includes renewal fee listed in 18VAC50-30-120.

All fees required by the board are nonrefundable and shall not be prorated.

~~For~~ Tradesman license reinstatement fees received on or before August 31, ~~2019~~ 2021, ~~the fee~~ shall be ~~$100~~ $165. For all other reinstatement fees received on or before August 31, 2021, the fee shall be $125. This fee includes the renewal fee listed in 18VAC50-30-120.

C. Applicants for reinstatement shall meet the requirements of 18VAC50-30-30.

D. The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification card is reinstated or a new application is required.

E. In order to ensure that license or certification card holders are qualified to practice as tradesmen, gas fitters, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, water well systems providers, or residential building energy analysts, no reinstatement will be permitted once two years from the expiration date has passed. After that date the applicant must apply for a new license or certification card and meet the then current entry requirements.

F. Any tradesman, liquefied petroleum gas fitter, or natural gas fitter provider activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, or as a certified elevator mechanic or certified accessibility mechanic, as defined in § 54.1-1140 of the Code of Virginia, or as a water well systems provider as defined in § 54.1-1129.1 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia. Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic certification may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Any individual who completes a residential building energy analysis, as defined in § 54.1-1144 of the Code of Virginia, subsequent to the expiration of a residential building energy analyst license may have engaged in illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.

G. The board may deny reinstatement of a license or certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

VA.R. Doc. No. R19-6015; Filed May 21, 2019, 12:26 p.m.

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BOARD OF NURSING

Final Regulation

Titles of Regulations: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-220).**

18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-10; adding 18VAC90-40-150 through 18VAC90-40-290).

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

Effective Date: July 10, 2019.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

The amendments establish the practitioners to whom the regulations apply and exceptions or nonapplicability. Provisions for the management of acute pain include requirements for the evaluation of the patient, limitations on quantity and dosage, and recordkeeping. Provisions for management of chronic pain include requirements for evaluation and treatment, including a treatment plan, informed consent and agreement, consultation with other providers, and medical recordkeeping. Provisions for prescribing of buprenorphine include requirements for patient assessment and treatment planning, limitations on prescribing the buprenorphine mono-product (without naloxone), dosages, co-prescribing of other drugs, consultation, and medical records for opioid addiction treatment. The amendments replace emergency regulations currently in effect.

Changes to the proposed regulation (i) add sickle cell disease to the exceptions, (ii) clarify that tramadol is an atypical opioid, (iii) replace the requirement for drug testing every three months in the first year following initiation of chronic pain management with testing that is "randomly at the discretion of the practitioner" at least once a year, and (iv) provide that a nurse practitioner who has been authorized by the boards for autonomous practice isn't limited to prescribing buprenorphine for opioid addiction per a practice agreement.

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

18VAC90-30-220. Grounds for disciplinary action against the license of a licensed nurse practitioner.

The boards may deny licensure or relicensure, revoke or suspend the license, or take other disciplinary action upon proof that the nurse practitioner:

1. Has had a license or multistate privilege to practice nursing in this Commonwealth or in another jurisdiction revoked or suspended or otherwise disciplined;

2. Has directly or indirectly represented to the public that the nurse practitioner is a physician, or is able to, or will practice independently of a physician;

3. Has exceeded the authority as a licensed nurse practitioner;

4. Has violated or cooperated in the violation of the laws or regulations governing the practice of medicine, nursing or nurse practitioners;

5. Has become unable to practice with reasonable skill and safety to patients as the result of a physical or mental illness or the excessive use of alcohol, drugs, narcotics, chemicals or any other type of material;

6. Has violated or cooperated with others in violating or attempting to violate any law or regulation, state or federal, relating to the possession, use, dispensing, administration or distribution of drugs; ~~or~~

7. Has failed to comply with continuing competency requirements as set forth in 18VAC90-30-105;

8. Has willfully or negligently breached the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful; or

9. Has engaged in unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program, the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

Part I
General Provisions

18VAC90-40-10. Definitions.

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

"Acute pain" means pain that occurs within the normal course of a disease or condition or as the result of surgery for which controlled substances containing an opioid may be prescribed for no more than three months.

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

"Certified nurse midwife" means an advanced practice registered nurse who is certified in the specialty of nurse midwifery and who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances containing an opioid may be prescribed for a period greater than three months.

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

"FDA" means the U.S. Food and Drug Administration.

"MME" means morphine milligram equivalent.

"Nonprofit health care clinics or programs" means a clinic organized in whole or in part for the delivery of health care services without charge or when a reasonable minimum fee is charged only to cover administrative costs.

"Nurse practitioner" means an advanced practice registered nurse who has met the requirements for licensure as a nurse practitioner as stated in 18VAC90-30.

"Practice agreement" means a written or electronic agreement jointly developed by the patient care team physician and the nurse practitioner for the practice of the nurse practitioner that also describes the prescriptive authority of the nurse practitioner, if applicable. For a nurse practitioner licensed in the category of certified nurse midwife, the practice agreement is a statement jointly developed with the consulting physician.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

"SAMHSA" means the federal Substance Abuse and Mental Health Services Administration.

Part V
Management of Acute Pain

18VAC90-40-150. Evaluation of the patient for acute pain.

A. The requirements of this part shall not apply to:

1. The treatment of acute pain related to (i) cancer, (ii) [sickle cell, (iii)] a patient in hospice care, or [~~(iii)~~ (iv)] a patient in palliative care;

2. The treatment of acute pain during an inpatient hospital admission or in a nursing home or an assisted living facility that uses a sole source pharmacy; or

3. A patient enrolled in a clinical trial as authorized by state or federal law.

B. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids. If

an opioid is considered necessary for the treatment of acute pain, the practitioner shall give a short-acting opioid in the lowest effective dose for the fewest possible days.

C. Prior to initiating treatment with a controlled substance containing an opioid for a complaint of acute pain, the prescriber shall perform a history and physical examination appropriate to the complaint, query the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia, and conduct an assessment of the patient's history and risk of substance misuse as a part of the initial evaluation.

18VAC90-40-160. Treatment of acute pain with opioids.

A. Initiation of opioid treatment for patients with acute pain shall be with short-acting opioids.

1. A prescriber providing treatment for a patient with acute pain shall not prescribe a controlled substance containing an opioid in a quantity that exceeds a seven-day supply as determined by the manufacturer's directions for use, unless extenuating circumstances are clearly documented in the medical record. This shall also apply to prescriptions of a controlled substance containing an opioid upon discharge from an emergency department.

2. An opioid prescribed as part of treatment for a surgical procedure shall be for no more than 14 consecutive days in accordance with manufacturer's direction and within the immediate perioperative period, unless extenuating circumstances are clearly documented in the medical record.

B. Initiation of opioid treatment for all patients shall include the following:

1. The practitioner shall carefully consider and document in the medical record the reasons to exceed 50 MME per day.

2. Prior to exceeding 120 MME per day, the practitioner shall document in the medical record the reasonable justification for such doses or refer to or consult with a pain management specialist.

3. Naloxone shall be prescribed for any patient when risk factors of prior overdose, substance misuse, doses in excess of 120 MME per day, or concomitant benzodiazepine are present.

C. Due to a higher risk of fatal overdose when opioids are used with benzodiazepines, sedative hypnotics, carisoprodol, and tramadol [(an atypical opioid)], the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

D. Buprenorphine is not indicated for acute pain in the outpatient setting, except when a prescriber who has obtained a SAMHSA waiver is treating pain in a patient whose primary diagnosis is the disease of addiction.

18VAC90-40-170. Medical records for acute pain.

The medical record shall include a description of the pain, a presumptive diagnosis for the origin of the pain, an examination appropriate to the complaint, a treatment plan, and the medication prescribed or administered to include the date, type, dosage, and quantity prescribed or administered.

Part VI
Management of Chronic Pain

18VAC90-40-180. Evaluation of the chronic pain patient.

A. The requirements of this part shall not apply to:

1. The treatment of chronic pain related to (i) cancer, (ii) [sickle cell, (iii)] a patient in hospice care, or [~~(iii)~~ (iv)] a patient in palliative care;

2. The treatment of chronic pain during an inpatient hospital admission or in a nursing home or an assisted living facility that uses a sole source pharmacy; or

3. A patient enrolled in a clinical trial as authorized by state or federal law.

B. Prior to initiating management of chronic pain with a controlled substance containing an opioid, a medical history and physical examination, to include a mental status examination, shall be performed and documented in the medical record, including:

1. The nature and intensity of the pain;

2. Current and past treatments for pain;

3. Underlying or coexisting diseases or conditions;

4. The effect of the pain on physical and psychological function, quality of life, and activities of daily living;

5. Psychiatric, addiction, and substance misuse histories of the patient and any family history of addiction or substance misuse;

6. A urine drug screen or serum medication level;

7. A query of the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia;

8. An assessment of the patient's history and risk of substance misuse; and

9. A request for prior applicable records.

C. Prior to initiating opioid analgesia for chronic pain, the practitioner shall discuss with the patient the known risks and benefits of opioid therapy and the responsibilities of the patient during treatment to include securely storing the drug and properly disposing of any unwanted or unused drugs. The practitioner shall also discuss with the patient an exit strategy

for the discontinuation of opioids in the event they are not effective.

18VAC90-40-190. Treatment of chronic pain with opioids.

A. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids.

B. In initiating opioid treatment for all patients, the practitioner shall:

1. Carefully consider and document in the medical record the reasons to exceed 50 MME per day;

2. Prior to exceeding 120 MME per day, the practitioner shall document in the medical record the reasonable justification for such doses or refer to or consult with a pain management specialist;

3. Prescribe naloxone for any patient when risk factors of prior overdose, substance misuse, doses in excess of 120 MME per day, or concomitant benzodiazepine are present; and

4. Document the rationale to continue opioid therapy every three months.

C. Buprenorphine mono-product in tablet form shall not be prescribed for chronic pain.

D. Due to a higher risk of fatal overdose when opioids, including buprenorphine, are given with other opioids, benzodiazepines, sedative hypnotics, carisoprodol, and tramadol [(an atypical opioid)], the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

E. The practitioner shall regularly evaluate for opioid use disorder and shall initiate specific treatment for opioid use disorder, consult with an appropriate health care provider, or refer the patient for evaluation for treatment if indicated.

18VAC90-40-200. Treatment plan for chronic pain.

A. The medical record shall include a treatment plan that states measures to be used to determine progress in treatment, including pain relief and improved physical and psychosocial function, quality of life, and daily activities.

B. The treatment plan shall include further diagnostic evaluations and other treatment modalities or rehabilitation that may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

C. The prescriber shall record in the medical records the presence or absence of any indicators for medication misuse or diversion and take appropriate action.

18VAC90-40-210. Informed consent and agreement for treatment of chronic pain.

A. The practitioner shall document in the medical record informed consent, to include risks, benefits, and alternative approaches, prior to the initiation of opioids for chronic pain.

B. There shall be a written treatment agreement, signed by the patient, in the medical record that addresses the parameters of treatment, including those behaviors that will result in referral to a higher level of care, cessation of treatment, or dismissal from care.

C. The treatment agreement shall include notice that the practitioner will query and receive reports from the Prescription Monitoring Program and permission for the practitioner to:

1. Obtain urine drug screen or serum medication levels, when requested; and

2. Consult with other prescribers or dispensing pharmacists for the patient.

D. Expected outcomes shall be documented in the medical record including improvement in pain relief and function or simply in pain relief. Limitations and side effects of chronic opioid therapy shall be documented in the medical record.

18VAC90-40-220. Opioid therapy for chronic pain.

A. The practitioner shall review the course of pain treatment and any new information about the etiology of the pain or the patient's state of health at least every three months.

B. Continuation of treatment with opioids shall be supported by documentation of continued benefit from the prescribing. If the patient's progress is unsatisfactory, the practitioner shall assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.

C. Practitioners shall check the Prescription Monitoring Program at least every three months after the initiation of treatment.

D. The practitioner shall order and review a urine drug screen or serum medication levels at the initiation of chronic pain management and [~~at least every three months for the first year of treatment and~~ thereafter randomly at the discretion of the practitioner but] at least [~~every six months thereafter~~ once a year].

E. The practitioner shall regularly evaluate for opioid use disorder and shall initiate specific treatment for opioid use disorder, consult with an appropriate health care provider, or refer the patient for evaluation for treatment if indicated.

18VAC90-40-230. Additional consultation.

A. When necessary to achieve treatment goals, the prescriber shall refer the patient for additional evaluation and treatment.

B. When a practitioner makes the diagnosis of opioid use disorder, treatment for opioid use disorder shall be initiated or the patient shall be referred for evaluation and treatment.

18VAC90-40-240. Medical records.

The prescriber shall keep current, accurate, and complete records in an accessible manner and readily available for review to include:

1. The medical history and physical examination;

2. Past medical history;

3. Applicable records from prior treatment providers or any documentation of attempts to obtain those records;

4. Diagnostic, therapeutic, and laboratory results;

5. Evaluations and consultations;

6. Treatment goals;

7. Discussion of risks and benefits;

8. Informed consent and agreement for treatment;

9. Treatments;

10. Medications, including date, type, dosage and quantity prescribed, and refills;

11. Patient instructions; and

12. Periodic reviews.

Part VII
Prescribing of Buprenorphine

18VAC90-40-250. General provisions.

A. Practitioners engaged in office-based opioid addiction treatment with buprenorphine shall have obtained a waiver from SAMHSA and the appropriate U.S. Drug Enforcement Administration registration.

B. Practitioners shall abide by all federal and state laws and regulations governing the prescribing of buprenorphine for the treatment of opioid use disorder.

C. Nurse practitioners who have obtained a SAMHSA waiver shall only prescribe buprenorphine for opioid addiction pursuant to a practice agreement with a SAMHSA-waivered doctor of medicine or doctor of osteopathic medicine [unless the nurse practitioner has been authorized by the boards for autonomous practice].

D. Practitioners engaged in medication-assisted treatment shall either provide counseling in their practice or refer the patient to a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, who has the education and experience to provide substance misuse counseling. The practitioner shall document provision of counseling or referral in the medical record.

18VAC90-40-260. Patient assessment and treatment planning.

A. A practitioner shall perform and document an assessment that includes a comprehensive medical and psychiatric history, substance misuse history, family history and psychosocial supports, appropriate physical examination, urine drug screen, pregnancy test for women of childbearing age and ability, a check of the Prescription Monitoring Program, and, when clinically indicated, infectious disease testing for human immunodeficiency virus, hepatitis B, hepatitis C, and tuberculosis.

B. The treatment plan shall include the practitioner's rationale for selecting medication assisted treatment, patient education, written informed consent, how counseling will be accomplished, and a signed treatment agreement that outlines the responsibilities of the patient and the practitioner.

18VAC90-40-270. Treatment with buprenorphine.

A. Buprenorphine without naloxone (buprenorphine mono-product) shall not be prescribed except:

1. When a patient is pregnant;

2. When converting a patient from methadone or buprenorphine mono-product to buprenorphine containing naloxone for a period not to exceed seven days;

3. In formulations other than tablet form for indications approved by the FDA; or

4. For patients who have a demonstrated intolerance to naloxone; such prescriptions for the mono-product shall not exceed 3.0% of the total prescriptions for buprenorphine written by the prescriber, and the exception shall be clearly documented in the patient's medical record.

B. Buprenorphine mono-product tablets may be administered directly to patients in federally licensed [~~opiate~~ opioid] treatment programs. With the exception of those conditions listed in subsection A of this section, only the buprenorphine product containing naloxone shall be prescribed or dispensed for use off site from the program.

C. The evidence for the decision to use buprenorphine mono-product shall be fully documented in the medical record.

D. Due to a higher risk of fatal overdose when buprenorphine is prescribed with other opioids, benzodiazepines, sedative hypnotics, carisoprodol, and tramadol [(an atypical opioid)], the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a

tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

E. Prior to starting medication-assisted treatment, the practitioner shall perform a check of the Prescription Monitoring Program.

F. During the induction phase, except for medically indicated circumstances as documented in the medical record, patients should be started on no more than eight milligrams of buprenorphine per day. The patient shall be seen by the prescriber at least once a week.

G. During the stabilization phase, the prescriber shall increase the daily dosage of buprenorphine in safe and effective increments to achieve the lowest dose that avoids intoxication, withdrawal, or significant drug craving.

H. Practitioners shall take steps to reduce the chances of buprenorphine diversion by using the lowest effective dose, appropriate frequency of office visits, pill counts, and checks of the Prescription Monitoring Program. The practitioner shall also require urine drug screens or serum medication levels at least every three months for the first year of treatment and at least every six months thereafter.

I. Documentation of the rationale for prescribed doses exceeding 16 milligrams of buprenorphine per day shall be placed in the medical record. Dosages exceeding 24 milligrams of buprenorphine per day shall not be prescribed.

J. The practitioner shall incorporate relapse prevention strategies into counseling or assure that they are addressed by a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, who has the education and experience to provide substance [~~abuse~~ misuse] counseling.

18VAC90-40-280. Special populations.

A. Pregnant women may be treated with the buprenorphine mono-product, usually 16 milligrams per day or less.

B. Patients younger than the age of 16 years shall not be prescribed buprenorphine for addiction treatment unless such treatment is approved by the FDA.

C. The progress of patients with chronic pain shall be assessed by reduction of pain and functional objectives that can be identified, quantified, and independently verified.

D. Practitioners shall (i) evaluate patients with medical comorbidities by history, physical exam, and appropriate laboratory studies and (ii) be aware of interactions of buprenorphine with other prescribed medications.

E. Practitioners shall not undertake buprenorphine treatment with a patient who has psychiatric comorbidities and is not stable. A patient who is determined by the practitioner to be psychiatrically unstable shall be referred for psychiatric evaluation and treatment prior to initiating medication-assisted treatment.

18VAC90-40-290. Medical records for opioid addiction treatment.

A. Records shall be timely, accurate, legible, complete, and readily accessible for review.

B. The treatment agreement and informed consent shall be maintained in the medical record.

C. Confidentiality requirements of 42 CFR Part 2 shall be followed.

VA.R. Doc. No. R17-5096; Filed May 14, 2019, 3:28 p.m.

BOARD OF PHARMACY

Fast-Track Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-10).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 10, 2019.

Effective Date: July 25, 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: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system, and § 54.1-3307 of the Code of Virginia, which specifies that the board shall regulate the practice of pharmacy and the manufacturing, dispensing, selling, distributing, processing, compounding, or disposal of drugs and devices.

Purpose: The purpose of the amended regulation is to maintain state regulations for consistency with the national standards for temperature and storage of drugs found in Chapter 659 of the United States Pharmacopeia (USP), which is a pharmacopeia (compendium of drug information) for the United States. The USP is published in a combined volume with the National Formulary (a formulary) as the USP-NF. USP-NF standards have a role in federal law; a drug or drug ingredient with a name recognized in USP-NF is considered adulterated if it does not satisfy compendial standards for strength, quality, or purity. USP has no role in enforcing its standards. Enforcement is the responsibility of U.S. Food and Drug Administration (FDA) and other government authorities in the United States and elsewhere. Consistency of state regulations with USP standards protects the public health and safety in matters relating to drug storage and integrity.

Rationale for Using Fast-Track Rulemaking Process: The impetus for this action is conforming to a national standard for drug safety and purity and should not be controversial, so a fast-track rulemaking process is appropriate.

Substance: 18VAC110-20-10 is amended to conform the definition of "cold" to include the revised temperature range for drug storage in a freezer in accordance with recent guidance from the United States Pharmacopeia.

Issues: There are no real advantages or 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 Pharmacy (Board) proposes to update the definition of cold to mirror that of United States (U.S.) Pharmacopeia.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs.

Estimated Economic Impact. Currently, the definition of cold in this regulation contains a temperature range for freezers (i.e., between -20 and -10 degrees Celsius or -4 and 14 degrees Fahrenheit). This language reflects the definition in the U.S. Pharmacopeia prior to its 2017 revision. Under the revised version, the freezer temperature range is -25 and -10 degrees Celsius or -13 and 14 degrees Fahrenheit.[1] The Board proposes to amend the regulation to reflect that change. Since the proposed range is broader than the current range, existing freezers at pharmacies would be sufficient to maintain the new range. Thus, no significant effect on pharmacies is expected from this change.

The 2017 version of the U.S. Pharmacopeia also established a new temperature range for articles that are recommended to be stored at a specific temperature that is below -20 Celsius or -4 degrees Fahrenheit. In those cases, the U.S. Pharmacopeia states the temperature of the storage location should be controlled to plus or minus 10 degrees of the recommended temperature.[2] The Board also proposes to incorporate this new range for articles that have a recommended storage condition. This new language can, theoretically, create a need to purchase new equipment for storage of such items or lead to no longer carrying those items if the pharmacy does not maintain the storage temperature within the recommended range. For example, a -40 degrees of Celsius recommended storage range would require the capability to control the temperature at -30 degrees of Celsius which is outside the temperature range of a freezer. The Board staff believes that this new language is unlikely to necessitate purchase of new equipment because most likely the pharmacies would already have the capability to maintain manufacturers recommended storage temperature range, or they would not stock those items. However, whether this change would lead to purchases of new equipment or no longer carrying some items at some pharmacies, or no effect at all on any pharmacies, cannot be ascertained with any degree of certainty. Thus, the net impact of this change is not known.

Businesses and Entities Affected. The proposed amendments apply to 1,813 permitted pharmacies.

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

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

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

Real Estate Development Costs. The proposed amendments are 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. Most pharmacies are owned by large retail chains. Whether the proposed amendments would have any costs or other effects on small businesses is not known.

Alternative Method that Minimizes Adverse Impact. Whether the proposed amendments would adversely affect small businesses is not known.

Adverse Impacts:

Businesses. Whether the proposed amendments would adversely affect businesses is not known.

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 page 6 at https://www.uspnf.com/sites/default/files/usp_pdf/EN/USPNF/revisions/659_rb_notice.pdf

[2]Ibid.

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

Summary:

The amendments conform the definition of "cold" in reference to the temperature range for drug storage in a freezer to recent guidance from the United States Pharmacopeia.

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 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) prescription" means a written prescription or order ~~which~~ that is transmitted by an electronic device that sends over telephone lines ~~which sends~~ 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.

"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 II through VI drugs and devices and any Schedule I investigational drugs.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for voluntary examination and certification of pharmacy technicians.

"Quality assurance plan" means a plan approved by the board for ongoing monitoring, measuring, evaluating, and, if necessary, improving the performance of a pharmacy function or system.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Robotic pharmacy system" means a mechanical system controlled by a computer that performs operations or activities relative to the storage, packaging, labeling, dispensing, or distribution of medications, and collects, controls, and maintains all transaction information.

"Safety closure container" means a container 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)~~ controlled between -25° and -10°C (-13° and 14°F). In those instances in which articles may have a recommended storage condition below -20°C (-4°F), the temperature of the storage location should be controlled to plus or minus 10 degrees.

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 (77°F); 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.

VA.R. Doc. No. R19-5775; Filed May 16, 2019, 3:00 p.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

Fast-Track Regulation

Title of Regulation: **18VAC145-30. Regulations Governing Certified Professional Wetland Delineators (amending 18VAC145-30-140).**

Statutory Authority: §§ 54.1-201 and 54.1-2203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 10, 2019.

Effective Date: August 1, 2019.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email soilscientist@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia grants authority to the board to promulgate regulations " . . . in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board."

Purpose: This proposed amendment addresses concerns in the wetland delineation community about the inappropriate use of professional work. The board requested this proposed addition to the standards of practice and conduct to promote transparency and ensure minimum competency in the practice of wetland delineation by certified professionals. Ensuring a professional's work is not used or altered without permission protects the safety of the public.

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is being used to amend the board's standards of practice and conduct because the proposed amendment is not expected to be controversial. Members of the regulated community requested the change, and it provides helpful clarification to existing guidelines and prohibitions on representations of professional opinion.

Substance: The board's proposed amendment to 18VAC145-30-140 adds a new prohibited act to make explicit that a Virginia certified professional wetland delineator is prohibited from using the work of another without written consent.

Issues: The primary advantage to the public of adding the proposed amendment is ensuring the integrity of the regulatory program for Virginia certified professional wetland delineators and promoting an ethical marketplace overall by prohibiting certificate holders from using another professional's work without permission. Moreover, businesses engaged in wetland delineation and the individual employees of those businesses will be better protected against improper use of their work. There are no disadvantages to the public or individual private citizens or businesses.

The primary advantage to the Commonwealth is that the regulatory program will be able to take disciplinary action against certificate holders who use the work of another without permission. Not only do such individuals take advantage of other professionals in their field, but such behavior puts the public's health, safety, and welfare at potential risk. There are no identified 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 for Professional Scientists, Wetland Professionals, and Geologists (Board) proposes to clarify that a Virginia certified professional wetland delineator is prohibited from using the work of another without written consent.

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

Estimated Economic Impact. The current standards of practice and conduct already prohibit certified wetland delineators from signing work they do not themselves prepare, review, or approve.[1] The Board proposes to make explicit in the regulation that a wetland delineator is prohibited from using the work of another without written

consent. The proposed change will allow the Board to take a disciplinary action against certificate holders who use the work of another without permission and strengthen the copyright protections afforded to the owners of original work.

Businesses and Entities Affected. There are 109 individuals certified as wetland delineators.

Localities Particularly Affected. There are no localities particularly affected.

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 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. Most, if not all, of the wetland delineators in the private sector are believed to be working for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendments do not have an adverse impact on businesses.

Localities. The proposed amendments will not adversely affect localities.

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

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[1]See 18VAC145-30-140(3).

Agency's Response to Economic Impact Analysis: The board concurs with the economic impact analysis.

Summary:

The amendments make explicit that a Virginia certified professional wetland delineator is prohibited from using the work of another without written consent. The standards of practice and conduct already prohibit certificate holders from signing work they do not themselves prepare, review, or approve; this amendment clarifies that using the work of another person or organization when rendering services requires written consent.

18VAC145-30-140. Standards of practice and conduct.

A Virginia certified professional wetland delineator:

1. Shall not submit any false statements, make any misrepresentations or fail to disclose any facts requested concerning any application for certification or recertification.

2. Shall not engage in any fraud, deceit, or misrepresentation in advertising, in soliciting or in providing professional services.

3. Shall not knowingly sign any plans, drawings, blueprints, surveys, reports, specifications, maps, or other documents not prepared or reviewed and approved by the certificate holder.

4. Shall not knowingly represent a client or employer on a project on which the certificate holder represents or has represented another client or employer without making full disclosure thereof.

5. Shall express a professional opinion only when it is founded on adequate knowledge of established facts at issue and based on a background of technical competence in the subject matter.

6. Shall not knowingly misrepresent factual information in expressing a professional opinion.

7. Shall immediately notify the client or employer and the appropriate regulatory agency if the certificate holder's professional judgment is overruled and not adhered to when advising appropriate parties of any circumstances of a substantial threat to the public health, safety, or welfare.

8. Shall exercise reasonable care when rendering professional services and shall apply the technical knowledge, skill, and terminology ordinarily applied by practicing wetland professionals.

9. Shall sign and date all plans, drawings, blueprints, surveys, reports, specifications, maps, or other documents prepared or reviewed and approved by the certificate holder. The certified professional wetland ~~professional~~ delineator shall also indicate that he is a Virginia ~~Certified Wetland Professional Delineator~~ certified professional wetland delineator on all plans, drawings, blueprints, surveys, reports, specifications, maps, or other documents prepared or reviewed and approved by the certificate holder and include his certificate number.

10. Shall not utilize the design, drawings, specifications, or work of another regulant to complete or to replicate any work without the written consent of the person who or organization that owns the design, drawings, specifications, or work.

VA.R. Doc. No. R19-5301; Filed May 16, 2019, 4:55 p.m.

TITLE 19. PUBLIC SAFETY

VIRGINIA FIRE SERVICES BOARD

Final Regulation

REGISTRAR'S NOTICE: The Virginia Fire Services Board 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 board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **19VAC15-20. Regulations Establishing Certification Standards for Fire Inspectors (repealing 19VAC15-20-10 through 19VAC15-20-1100).**

19VAC15-30. Regulations Establishing the Certification Standards for Fire Investigators (repealing 19VAC15-30-10 through 19VAC15-30-1970).

19VAC15-40. Regulations Governing the Certification of Instructors Providing Training at Local Fire Training Facilities (repealing 19VAC15-40-10 through 19VAC15-40-110).

Statutory Authority: § 9.1-203 of the Code of Virginia.

Effective Date: September 1, 2019.

Agency Contact: Mohamed G. Abbamin, MPA, Policy Manager, Department of Fire Programs, 1005 Technology Park Drive, Glen Allen, VA 23059, telephone (804) 249-1982, or email mohamed.abbamin@vdfp.virginia.gov.

Summary:

The amendments repeal fire inspector training requirements (19VAC15-20), fire investigator training requirements (19VAC15-30), and the requirements for the instructors at local fire training facilities (19VAC15-40) because the agency no longer regulates such training.

VA.R. Doc. No. R19-5945; Filed April 25, 2019, 4:04 p.m.

DEPARTMENT OF STATE POLICE

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 Department of State Police will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **19VAC30-20. Motor Carrier Safety Regulations (amending 19VAC30-20-80).**

Statutory Authority: § 52-8.4 of the Code of Virginia; 49 CFR Part 390.

Effective Date: July 10, 2019.

Agency Contact: Lieutenant Sean Stewart, Assistant Safety Officer, Motor Carrier Division, Department of State Police, P.O. Box 27472, Richmond, VA 23261, telephone (804) 278-5303, or email sean.stewart@vsp.virginia.gov.

Summary:

The amendment updates the effective date of the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration that are incorporated for compliance and enforcement purposes.

19VAC30-20-80. Compliance.

Every person and commercial motor vehicle subject to the Motor Carrier Safety Regulations operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the United States Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of ~~October 1, 2018~~ July 1, 2019, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 366, 370 through 376, 379, 380 Subpart E, 382, 385, 386 Subpart G, 387, 390 through 397, and 399, which are incorporated in these regulations by reference, with certain exceptions.

VA.R. Doc. No. R19-6017; Filed May 17, 2019, 4:20 p.m.

EXECUTIVE ORDER NUMBER THIRTY-ONE (2019)

Transfer of the Museum of Natural History to the Secretary of Education

Importance of the Issue

The Commonwealth of Virginia is home to some of the finest state-owned museums in the nation. These museums are vital educational resources for citizens and visitors of the Commonwealth. Through these institutions, the public can study and enjoy history, science and the arts.

The Secretary of Education is responsible for coordinating among and supporting public education institutions throughout the Commonwealth. The secretariat provides guidance to the Virginia Department of Education, the Virginia Community College System and the State Council of Higher Education for Virginia, and Virginia's 16 public colleges and universities, 23 community colleges and five higher education and research centers, seven state-funded arts and cultural institutions, and the Library of Virginia.

Pursuant to the Code of Virginia, the Virginia Museum of Natural History investigates, preserves, and exhibits the various elements of natural history found in Virginia and other parts of the United States and the world. It encourages and promotes research in the varied natural heritage of Virginia and other parts of the world. It encourages individuals and scholars to study our natural history and to apply this understanding of the past to the challenges of the future. The museum coordinates an efficient network in Virginia where researchers and the public can readily access the museum's materials and its branches.

The mission and purpose of the Virginia Museum of Natural History can be achieved best if it is integrated into the network of Virginia's other museums, colleges, and universities. This requires transferring management and oversight responsibilities from the Secretary of Natural Resources to the Secretary of Education.

The Museum of Natural History will continue performing all existing functions and duties in accordance with Virginia law.

Transfer of the Museum

By virtue of the authority vested in me as Governor under §§ 2.2-208 and 2.2-215 of the Code of Virginia, I hereby authorize the transfer of administrative authority of the Virginia Museum of Natural History from the Secretary of Natural Resources to the Secretary of Education.

Effective Date of the Executive Order

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

Given under my hand and under the Seal of the Commonwealth of Virginia, this 14th day of May, 2019.

/s/ Ralph S. Northam
Governor

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the initial or additional public comment period, comments may be made through the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional comment period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies to initiate or extend a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Title of Document: Inspections of Specific Components of a Residential Building.

Public Comment Deadline: July 10, 2019.

Effective Date: July 11, 2019.

Agency Contact: Mary Broz-Vaughan, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, or email mary.broz-vaughan@dpor.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: Guidance Document Governing Certain Provisions of the Regulations Establishing Standards for Accrediting Public Schools in Virginia.

Public Comment Deadline: July 10, 2019.

Effective Date: July 11, 2019.

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

STATE BOARD OF HEALTH

Title of Document: Hardship Guidelines.

Public Comment Deadline: July 10, 2019.

Effective Date: July 11, 2019.

Agency Contact: Lance Gregory, Division Director, Department of Health, 109 Governor Street, 5th Floor, Richmond, VA 23219, telephone (804) 864-7491, or email lance.gregory@vdh.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Document: Hazardous Waste Generated at Remote Site Locations by Utility and Rail Companies.

Public Comment Deadline: July 10, 2019.

Effective Date: July 11, 2019.

Agency Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, or email cindy.berndt@deq.virginia.gov.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

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 Virginia Board for Asbestos, Lead, and Home Inspectors is conducting a periodic review and small business impact review of each listed regulation. The review of each regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

18VAC15-11, Public Participation Guidelines

18VAC15-20, Virginia Asbestos Licensing Regulations

18VAC15-30, Virginia Lead-Based Paint Activities Regulations

18VAC15-40, Home Inspector Licensing Regulations

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.

Public comment period begins June 10, 2019, and ends July 1, 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 Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.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 the review will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

COMMON INTEREST COMMUNITY BOARD

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 Common Interest Community Board is conducting a periodic review and small business impact review of **18VAC48-30, Condominium Regulations**. 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.

Public comment period begins June 10, 2019, and ends July 1, 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 Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.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 Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

STATE CORPORATION COMMISSION

Bureau of Insurance

May 17, 2019

Administrative Letter 2019-02

TO: All Health Carriers Licensed in Virginia and Interested Parties

RE: External Review of Adverse Coverage Determinations for Cancer Patients

The purpose of this Administrative Letter is to provide guidance for the submission of complaint system filings, notice and policy form requirements to comply with the provisions of Chapter 826 (House Bill 1915) and Chapter 840 (Senate Bill 1161) enacted by the General Assembly during its 2019 legislative session.

Chapter 826 (House Bill 1915) and Chapter 840 (Senate Bill 1161) of the Acts of General Assembly, became effective April 3, 2019, and amend the following sections within Title 38.2 of the Code of Virginia: §§ 38.2-3559, 38.2-3560, 38.2-

3561 and 38.2-3562. The bills establish that a covered person is not required to exhaust the health carrier's internal appeal process before seeking a standard or expedited external review of an adverse determination involving the treatment of cancer. In the event of an adverse determination, the health carrier must notify the covered person of this right. The bills are applicable to all plans offered by health carriers except those specifically excluded in § 38.2-3557 of the Code of Virginia.

Complaint System Filings

Section 38.2-5804 of the Code of Virginia requires all Managed Care Health Insurance Plans (MCHIPs) to file their complaint systems with the State Corporation Commission and the State Health Commissioner. The State Corporation Commission's Bureau of Insurance (Bureau) anticipates that all health carriers will need to revise existing complaint and appeal procedures, and that all MCHIPs that are health carriers will need to refile for approval revised complaint and appeal procedures. The Bureau's Complaint System and Appeal Procedures/MCHIP Filing Requirements checklist has been updated to incorporate the new legislative requirements. The checklist can be found on the Bureau's website at http://www.scc.virginia.gov/boi/co/index.aspx.

In order to expedite and facilitate the review and approval of MCHIP complaint and appeal procedure filings, the Bureau requests that applicable MCHIPs complete and return the checklist with the filing of its new or revised procedures. MCHIPs should provide a red-line identification of the changes made to its procedures. Revised complaint system and appeal procedure filings that comply with this new requirement must be filed with the Bureau by June 3, 2019.

External Review Request Form

The External Review Request Form, Form 216-A, has been updated to allow the covered person to request a standard or expedited external review if an adverse determination involves treatment of cancer. The revised Form 216-A can be found on the Bureau's website at http://www.scc.virginia.gov/boi/omb/ext_review.aspx.

Policy Forms

In lieu of carriers filing endorsements to 2019 policy forms, health carriers may use the attached notice to inform policyholders of the external review process change. If a carrier chooses not to use this notice, or if a carrier has already sent a notice, the carrier should submit its sent or intended notice to the Bureau for review and approval. The Bureau will not penalize a carrier for sending a notice without our approval if such notice was sent prior to this Administrative Letter and accurately reflects the new requirements. If a carrier wishes to amend its policy forms instead of using the attached general notice, the carrier must submit the amendment to the Bureau by May 28, 2019, for review and approval.

Please contact the Bureau with any questions or requests for clarification. Questions or clarification regarding the external review process should be addressed to Kim Naoroz, Principal Insurance Market Examiner, Office of Independent External Review, Life and Health Division, Bureau of Insurance, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9913, FAX (804) 371-9915, or email kim.naoroz@scc.virginia.gov.

Questions or clarification regarding complaint system filings should be addressed to Todd Bryant, Principal Insurance Market Examiner, Office of the Managed Care Ombudsman, Life and Health Division, Bureau of Insurance, P. O. Box 1157, Richmond, VA 23218, telephone (804) 371-9760, FAX (804) 371-9944, or email todd.bryant@scc.virginia.gov.

/s/ Scott A. White
Commissioner of Insurance

Attachment

Notice to Policyholder and Dependents of

Revision to Your Appeal Process

This Notice Advises You of Expanded Protection to Your Appeal Process due to a Newly Enacted Virginia Law. Keep this Notice with Your Policy Documents.

Effective April 3, 2019, Virginia law requires that should you receive an "adverse determination" from [name of carrier or the utilization review entity] involving the treatment of cancer, you are not required to exhaust [name of carrier's] internal appeal process before requesting a standard or expedited independent external review. The notice you receive with an adverse determination will inform you of this right and provide you with necessary information.

"Adverse determination" means a determination by a health carrier or its designee utilization review entity that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness, and the requested service or payment for the service is therefore denied, reduced, or terminated.

You can find additional information concerning the appeal and external review process in your policy/certificate. Please direct any questions to: _____.

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Reams 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 Dinwiddie County pursuant to 9VAC15-60. The project is located on approximately 1,500-2,000 acres west of Interstate 95, and approximately eight miles east of the town of Dinwiddie. The project conceptually consists of approximately 234,000 435-watt modules across 82.8 megawatts alternating current arrays, providing a facility net capacity of 80 megawatts alternating current.

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, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

Walnut Solar I LLC Revised Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - King and Queen County

Walnut Solar I LLC has submitted a revised notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in King and Queen County pursuant to 9VAC15-60. The revised notice increases the size of the project to 149.90 megawatts. The project is located approximately two miles southeast of the community of Shacklefords on the south side of State Route 14 in King and Queen County. The project will be constructed on multiple parcels of land totaling approximately 1,800 acres and will use conventional solar panels to deliver up to 149.90 megawatts of electricity (alternating current) to an existing transmission line. Previous notices of intent on this project were published in the Virginia Register of Regulations on August 21, 2017 (33:26 VA.R. 3011) and October 1, 2018 (35:3 VA.R. 498).

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, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Public Hearing

Pursuant to § 2.2-4006 A 12 and § 36-100 of the Code of Virginia, the Board of Housing and Community Development will hold a public hearing on the **Virginia Amusement Device Regulations (13VAC5-31), Virginia Statewide Fire Prevention Code (13VAC5-51), Virginia Uniform Statewide Building Code (13VAC5-63), and the Virginia Industrialized Building Safety Regulations (13VAC5-91)**.

At the public hearing, the board will also receive comments regarding the regulatory actions for Virginia Certification Standards (13VAC5-21), the Virginia Manufactured Home Safety Regulations (13VAC5-95), and the emergency cooling amendment to the Virginia Uniform Statewide Building Code (13VAC5-63-540). Public hearings regarding these three regulations will also be held after publication of the proposed regulations as stated in their respective Notices of Intended Regulatory Action.

The purpose of the public hearing is to consider updating the listed codes to the newest editions of the model codes and standards and to consider related proposals prior to the publication of proposed regulations.

The public hearing will be held at the Virginia Housing Center, 4224 Cox Road, Glen Allen, VA 23060, beginning at 10 am on July 22, 2019. For more information, please contact Kyle Flanders, telephone (804) 786-6761 or email kyle.flanders@dhcd.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Opportunity for Public Comment on the Draft Pharmacy (Appendix D) Provider Manual for Stakeholder Input

The new Pharmacy Appendix D provider manual is now posted on the Department of Medical Assistance Services website at http://www.dmas.virginia.gov/#/manualdraft for public comment through June 12, 2019.

Public comment period: May 13, 2019, through June 12, 2019.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

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 of Professional and Occupational Regulation is conducting a periodic review and small business impact review of **18VAC120-11, Public Participation Guidelines**. 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.

Public comment period begins June 10, 2019, and ends July 1, 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 Mary Broz-Vaughan, Acting Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8519, FAX (804) 527-4408, or email director@dpor.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 Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

STATE BOARD OF SOCIAL SERVICES

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 State Board of Social Services is conducting a periodic review and small business impact review of each listed regulation. The review of each 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 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.

22VAC40-680, Virginia Energy Assistance Program - Low Income Home Energy Assistance Program (LIHEAP)

Contact Information: Denise Surber, Energy Assistance Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7386, FAX (804) 726-7358, or email denise.t.surber@dss.virginia.gov.

22VAC40-780, Eligibility for Direct Social Services

Contact Information: Nikki Clarke Callaghan, Program Manager for Legislation and Regulations, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7943, FAX (804) 726-7499, or email nikki.clarke@dss.virginia.gov.

22VAC40-901, Community Services Block Grant Program

Contact Information: Matt Fitzgerald, Community Service Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7142, FAX (804) 726-7088, or email matt.fitzgerald@dss.virginia.gov.

Public comment period begins June 10, 2019, and ends July 1, 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 the agency contacts listed in this notice.

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 the review will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

TREASURY BOARD

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 of the Treasury and Treasury Board are conducting a periodic review and small business impact review of **1VAC75-11, Public Participation Guidelines**. 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.

Public comment period begins June 10, 2019, and ends July 2, 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 William Watt, Senior Policy Analyst, Treasury Board, 101 North 14th Street, 3rd Floor, Richmond, VA 23219, telephone (804) 371-6242, FAX (804) 225-3167, or email william.watt@trs.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 Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

VIRGINIA WASTE MANAGEMENT BOARD

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 of Environmental Quality is conducting a periodic review and small business impact review of **9VAC20-81, Solid Waste Management Regulations**. 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.

Public comment period begins June 10, 2019, and ends July 1, 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 Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the 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 Greensville County Water and Sewer Authority

An enforcement action has been proposed for Greensville County Water and Sewer Authority (WSA) for alleged violations that occurred at the Falling Run Wastewater Treatment Plant in Emporia, Virginia. The State Water Control Board proposes to issue a consent special order to Greensville County WSA to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Cynthia Akers will accept comments by email at cynthia.akers@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from June 10, 2019, to July 10, 2019.

Proposed Consent Order for Herndon Car Wash LLC

An enforcement action has been proposed for Herndon Car Wash LLC for violations of the State Water Control Law and regulations at the Flagship Car Wash facility located in Herndon, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Flagship Car Wash facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Benjamin Holland will accept comments by email at benjamin.holland@deq.virginia.gov, or by postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from June 11, 2019, through July 11, 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.