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.**

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

PUBLICATION SCHEDULE AND DEADLINES

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

June 2019 through August 2020

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

Nature of Petitioner's Request: Amend the qualifications for supervision to allow a licensed counselor to supervise residents without the two-year post-licensure clinical experience requirement if the licensee has completed a doctoral level supervision course or doctoral level supervision internship as a part of the completion of a doctoral degree.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition will be filed with the Virginia Registrar of Regulations and published on June 24, 2019, with comment requested until July 23, 2019. It will also be placed on the Virginia Regulatory Town Hall and be 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 23, 2019.

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

VA.R. Doc. No. R19-36; Filed May 23, 2019, 8:34 a.m.

Agency Decision

Title of Regulation: **18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.**

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

Name of Petitioner: Michael Hayter.

Nature of Petitioner's Request: To amend regulations to waive the requirement for an examination for licensed clinical social workers who can show clinical experience based in substance abuse services to become licensed substance abuse treatment practitioners. Licensed professional counselors currently have such a waiver.

Agency Decision: Request denied.

Statement of Reason for Decision: The petition was published with comment requested from January 21, 2019, to February 20, 2019. There were no public comments posted electronically on the Virginia Regulatory Town Hall or received by the board. At its meeting on May 31, 2019, the board discussed the request to amend regulations and voted not to initiate rulemaking. Recently, the board conducted a periodic review of regulations and recommended that the exemption from examination currently in place for licensed professional counselors be deleted in regulations governing licensure of substance abuse treatment practitioners. Therefore, members did not support adding an exemption for licensed clinical social workers.

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

VA.R. Doc. No. R19-20; Filed May 31, 2019, 3:06 p.m.

Agency Decision

Title of Regulation: **18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals.**

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

Name of Petitioner: Michelle Morganegg.

Nature of Petitioner's Request: To revise regulations to accept a bachelor's degree in criminology and criminal justice to qualify for registration as a qualified mental health professional-child and to accept supervised experience obtained in another state.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on May 31, 2019, the board discussed the request to amend regulations and voted not to initiate rulemaking. In its adoption of final regulations to replace the emergency regulations currently in effect, the board has already proposed an amendment to accept supervised experience obtained in another United States jurisdiction, so a further amendment is unnecessary to respond to that aspect of the petition.

While guidance document 115-8 does not list criminology as a related degree for QMHP registration, it does say: "The board may consider other degrees in human services or in fields related to the provision of mental health services." Therefore, it is possible that an applicant's coursework may be sufficient to determine that the applicant is qualified in the provision of mental health services.

Agency Contact: Jaime Hoyle, Executive Director, Board of Couseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R19-39; Filed May 31, 2019, 15:17 p.m.

BOARD OF DENTISTRY

Initial Agency Notice

Title of Regulation: **18VAC60-21. Regulations Governing the Practice of Dentistry.**

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

Name of Petitioner: Dagoberto Zapatero.

Nature of Petitioner's Request: Amendments to clarify that a digital scan is the equivalent of a final impression if used to fabricate an appliance to be inserted into a patient's mouth and to specify that a patient-doctor relationship should be established in a face-to-face encounter.

Agency Plan for Disposition of Request: The petition will be published on June 24, 2019, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, ending July 23, 2019. The request to amend regulations and any comments for or against the petition will be considered by the board at the first scheduled meeting after close of comment, which will be September 13, 2019. The petitioner will receive information on the board's decision after that date.

Public Comment Deadline: July 23, 2019.

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

VA.R. Doc. No. R19-38; Filed June 4, 2019, 10:45 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Initial Agency Notice

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

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

Name of Petitioner: Cynthia Hites.

Nature of Petitioner's Request: "I, Cynthia Hites, a citizen of the Commonwealth of Virginia, pursuant to § 2.2-4007 of the Code of Virginia, do humbly submit this petition for the following amendment to Virginia Administrative Code 24VAC35-60-70 F 3 (Ignition Interlock Regulations). This petition does not seek to address ethanol specificity, as it is already established by law. 24VAC35-60-70 states Virginia ignition interlock machines 'shall be alcohol specific,' and 24VAC35-60-20 defines that alcohol as ethyl alcohol (C_2H_5OH). The machines shall be ethanol specific, and that is not in question. This petition directly addresses the state's usage of the electrochemical fuel cell for ignition interlock, and because it cannot meet the standards set forth by law, avenues must be opened to improve the science behind breath testing. The electrochemical fuel cell is a simple and unsophisticated tool used to detect alcohol, which, in chemistry, as in this context, does not mean drinking liquor, but simply means any organic compound that contains one or more hydroxl groups attached to a carbon atom. These alcohols include, but are not limited to: Sorbitol ($C_6H_{14}O_6$), Isopropanol (C_3H_8O), Cholesterol ($C_{27}H_{46}O$), Xylitol ($C_5H_7(OH)_5$), Erythritol ($C_4H_{10}O_4$), Methanol (CH_4O), Menthol ($C_{10}H_{20}O$), and Cortisol ($C_{21}H_{30}O_5$). For this reason, Virginia law 24VAC35-60-20 explicitly defines alcohol as the compound C_2H_5OH, which is ethanol. Being non-ethanol specific, the electrochemical fuel cell measures and records citizen's private biological medical information and misconstrues it falsely as ethanol. I believe this is an invasion of the medical privacy afforded by the Health Insurance Portability and Affordability Act. Measuring a litany of bodily organic compounds and claiming them to be ethanol is unethical, invasive, and totally misleading to the general public. It goes against the intent of the statute. To have any lesser standard than ethanol specificity is a disservice to society, and because the electrochemical fuel cell measures an unknown and inexhaustive set of compounds, its usage must be suspended until such time a device can be proven to meet the standards set forth by 24VAC35-60-20 and 24VAC35-60-70. Currently, 24VAC35-60-70 F 3 states: '3. The ignition interlock device shall be alcohol specific, using an electrochemical fuel cell that reacts to and measures ethanol, minimizing positive results from other substances.' This petition seeks to change the wording from 'an electrochemical fuel cell' to 'technology' and to change the word 'minimizing' to 'eliminating,' thus reading: '3. The ignition interlock device shall be alcohol specific, using technology that reacts to and measures ethanol, eliminating positive results from other substances.' A device that detects and measures only drinking alcohol is a product of science fiction. Electrochemical fuel cells measure and collect private health data and bodily emissions, aside from drinking alcohol, then uses that private health data to falsely accuse citizens of ethanol ingestion. Continued usage of electrochemical fuel cells for this purpose constitutes nothing less than governmental gaslighting."

Agency Plan for Disposition of Request: This petition will be considered by the Commission on the Virginia Alcohol Safety Action Program at its first quarterly meeting in 2020 (date to be determined).

Public Comment Deadline: December 31, 2019.

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

VA.R. Doc. No. R19-37; Filed May 24, 2019, 11:15 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

Final Regulation

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

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-50, 4VAC15-20-65, 4VAC15-20-130; adding 4VAC15-20-240).**

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

Effective Date: July 1, 2019.

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

Summary:

The amendments (i) update department headquarters references, (ii) prohibit use of drones for certain activities, and (iii) increase license fees.

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

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

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's 2018 "List of Native and Naturalized Fauna of Virginia," with copies available in the ~~Richmond~~ headquarters and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia that have established wild, self-sustaining populations, as included in the department's 2018 "List of Native and Naturalized Fauna of Virginia," with copies available in the ~~Richmond~~ headquarters and regional offices of the department.

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

The following animals are defined as domestic animals:

Domestic dog (Canis familiaris), including wolf hybrids.

Domestic cat (Felis catus), including hybrids with wild felines.

Domestic horse (Equus caballus), including hybrids with Equus asinus.

Domestic ass, burro, and donkey (Equus asinus).

Domestic cattle (Bos taurus and Bos indicus).

Domestic sheep (Ovis aries) including hybrids with wild sheep.

Domestic goat (Capra hircus).

Domestic swine (Sus scrofa), including pot-bellied pig and excluding any swine that are wild or for which no claim of ownership can be made.

Llama (Lama glama).

Alpaca (Lama pacos).

Camels (Camelus bactrianus and Camelus dromedarius).

Domesticated races of hamsters (Mesocricetus spp.).

Domesticated races of mink (Mustela vison) where adults are heavier than 1.15 kilograms or their coat color can be distinguished from wild mink.

Domesticated races of guinea pigs (Cavia porcellus).

Domesticated races of gerbils (Meriones unguiculatus).

Domesticated races of chinchillas (Chinchilla laniger).

Domesticated races of rats (Rattus norvegicus and Rattus rattus).

Domesticated races of mice (Mus musculus).

Domesticated breeds of European rabbit (Oryctolagus cuniculus) recognized by the American Rabbit Breeders Association, Inc. and any lineage resulting from crossbreeding recognized breeds. A list of recognized rabbit breeds is available on the department's website.

Domesticated races of chickens (Gallus).

Domesticated races of turkeys (Meleagris gallopavo).

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

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

Domesticated races of guinea fowl (Numida meleagris).

Domesticated races of peafowl (Pavo cristatus).

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

B. Exception for red foxes and European rabbits. Domesticated red foxes (Vulpes vulpes) having coat colors distinguishable from wild red foxes and wild European rabbits possessed in captivity on July 1, 2017, may be maintained in captivity until the animal dies, but the animal may not be bred or sold without a permit from the department. Persons possessing domesticated red foxes or European rabbits without a permit from the department must declare such possession in writing to the department by January 1, 2018. This written declaration must include the number of individual animals in possession and date acquired, sex, estimated age, coloration, and a photograph of each fox or European rabbit. This written declaration shall (i) serve as a permit for possession only, (ii) is not transferable, and (iii) must be renewed every five years.

4VAC15-20-65. Hunting, trapping, and fishing license and permit fees.

In accordance with the authority of the board under subdivision 16 of § 29.1-103 of the Code of Virginia, the following fees are established for hunting, trapping, and fishing licenses and permits:

Virginia Resident Licenses to Hunt	
Type license	Fee
~~1 year~~ One-year Resident License to Hunt, for licensees 16 years of age or older	$22.00
~~2 year~~ Two-year Resident License to Hunt, for licensees 16 years of age or older	$43.00
~~3 year~~ Three-year Resident License to Hunt, for licensees 16 years of age or older	$64.00
~~4 year~~ Four-year Resident License to Hunt, for licensees 16 years of age or older	$85.00
County or City Resident License to Hunt in County or City of Residence Only, for licensees 16 years of age or older	$15.00
Resident Senior Citizen Annual License to Hunt, for licensees 65 years of age or older	$8.00
Resident Junior License to Hunt, for licensees 12 through 15 years of age, optional for licensees ~~under~~ younger than 12 years of age	$7.50
Resident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with archery equipment during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees ~~under~~ younger than 16 years of age	$15.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with archery equipment during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters (also listed under Virginia Resident Licenses to Fish)	~~$132.00~~ [~~$109.00~~ $99.00]
Resident Hunting License for Partially Disabled Veterans	$11.00
Resident Infant Lifetime License to Hunt	$130.00
Resident Junior Lifetime License to Hunt, for licensees ~~under~~ younger than 12 years of age at the time of purchase	~~$255.00~~ $260.00
Resident Lifetime License to Hunt, for licensees at the time of purchase:	
through 44 years of age	~~$260.00~~ $265.00
45 through 50 years of age	~~$210.00~~ $215.00
51 through 55 years of age	~~$160.00~~ $165.00
56 through 60 years of age	~~$110.00~~ $115.00

61 through 64 years of age	~~$60.00~~ $65.00
65 years of age and ~~over~~ older	~~$20.00~~ $25.00
~~Resident Hunting License for Partially Disabled Veterans~~	~~$11.00~~
Totally and Permanently Disabled Resident Special Lifetime License to Hunt	$15.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt or Freshwater Fish (also listed under Virginia Resident Licenses to Fish)	no fee

Virginia Resident Licenses for Additional Hunting Privileges	
Type license or permit	Fee
Resident Deer and Turkey Hunting License, for licensees 16 years of age or older	$22.00
Resident Junior Deer and Turkey Hunting License, for licensees ~~under~~ younger than 16 years of age	$7.50
Resident Archery License to Hunt with archery equipment during archery hunting season	$17.00
Resident Bear Hunting License	$20.00
Resident Muzzleloading License to Hunt during muzzleloading hunting season	$17.00
Resident Bonus Deer Permit	$17.00
Resident Fox Hunting License to hunt foxes on horseback with hounds without firearms (not required of an individual holding a general License to Hunt)	$22.00

Virginia Nonresident Licenses to Hunt	
Type license	Fee
Nonresident License to Hunt, for licensees 16 years of age or older	$110.00
Nonresident Three-Day Trip License to Hunt	$59.00
Nonresident Youth License to Hunt, for licensees:	
~~under~~ younger than 12 years of age	$12.00
12 through 15 years of age	$15.00
Nonresident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with archery equipment during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees ~~under~~ younger than 16 years of age	$30.00
Nonresident Annual Hunting License for Partially Disabled Veterans	$55.00
Nonresident Annual Hunting License for Totally and Permanently Disabled Veterans	$27.50
Nonresident Infant Lifetime License to Hunt	$275.00
Nonresident Lifetime License to Hunt	~~$555.00~~ $580.00

Virginia Nonresident Licenses for Additional Hunting Privileges	
Type license or permit	Fee
Nonresident Deer and Turkey Hunting License, for licensees:	
16 years of age or older	$85.00
12 through 15 years of age	$15.00
~~under~~ younger than 12 years of age	$12.00
Nonresident Bear Hunting License	$150.00
Nonresident Archery License to Hunt with archery equipment during archery hunting season	$30.00
Nonresident Muzzleloading License to Hunt during muzzleloading hunting season	$30.00
Nonresident Shooting Preserve License to Hunt within the boundaries of a licensed shooting preserve	$22.00
Nonresident Bonus Deer Permit	$30.00
Nonresident Fox Hunting License to hunt foxes on horseback with hounds without firearms (not required of an individual holding a general License to Hunt)	$110.00

Miscellaneous Licenses or Permits to Hunt	
Type license or permit	Fee
Waterfowl Hunting Stationary Blind in Public Waters License	$22.50
Waterfowl Hunting Floating Blind in Public Waters License	$40.00
Foxhound Training Preserve License	$17.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Fish)	[$17.00 ~~$22.00~~]

Virginia Resident and Nonresident Licenses to Trap	
Type license	Fee
~~1 year~~ One-year Resident License to Trap, for licensees 16 years of age or older	$45.00
~~2 year~~ Two-year Resident License to Trap, for licensees 16 years of age or older	$89.00
~~3 year~~ Three-year Resident License to Trap, for licensees 16 years of age or older	$133.00
~~4 year~~ Four-year Resident License to Trap, for licensees 16 years of age or older	$177.00
County or City Resident License to Trap in County or City of Residence Only	$20.00
Resident Junior License to Trap, for licensees ~~under~~ younger than 16 years of age	$10.00
Resident Senior Citizen License to Trap, for licensees 65 years of age or older	$8.00
Resident Senior Citizen Lifetime License to Trap, for licensees 65 years of age or older	~~$20.00~~ $25.00
Totally and Permanently Disabled Resident Special Lifetime License to Trap	$15.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Trap	$15.00
Nonresident License to Trap	$205.00

Virginia Resident Licenses to Fish	
Type license	Fee
~~1 year~~ One-year Resident License to Freshwater Fish	$22.00
~~2 year~~ Two-year Resident License to Freshwater Fish	$43.00
~~3 year~~ Three-year Resident License to Freshwater Fish	$64.00
~~4 year~~ Four-year Resident License to Freshwater Fish	$85.00
County or City Resident License to Freshwater Fish in County or City of Residence Only	$15.00
Resident License to Freshwater Fish, for licensees 65 years of age or older	$8.00
Resident License to Fish in Designated Stocked Trout Waters	$22.00
Resident License to Freshwater and Saltwater Fish	$38.50
Resident License to Freshwater Fish for Five Consecutive Days	$13.00
Resident License to Freshwater and Saltwater Fish for Five Consecutive Days	$23.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with archery equipment during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters (also listed under Virginia Resident Licenses to Hunt)	~~$132.00~~ [~~$109.00~~ $99.00]
Resident Fishing License for Partially Disabled Veterans	$11.00
Resident Infant Lifetime License to Fish	$130.00
Resident Special Lifetime License to Freshwater Fish, for licensees at the time of purchase:	
through 44 years of age	~~$260.00~~ $265.00
45 through 50 years of age	~~$210.00~~ $215.00
51 through 55 years of age	~~$160.00~~ $165.00

56 through 60 years of age	~~$110.00~~ $115.00
61 through 64 years of age	~~$60.00~~ $65.00
65 years of age and ~~over~~ older	~~$20.00~~ $25.00
Resident Special Lifetime License to Fish in Designated Stocked Trout Waters, for licensees at the time of purchase:	
through 44 years of age	~~$260.00~~ $265.00
45 through 50 years of age	~~$210.00~~ $215.00
51 through 55 years of age	~~$160.00~~ $165.00
56 through 60 years of age	~~$110.00~~ $115.00
61 through 64 years of age	~~$60.00~~ $65.00
65 years of age and ~~over~~ older	~~$20.00~~ $25.00
~~Resident Fishing License for Partially Disabled Veterans~~	~~$11.00~~
Totally and Permanently Disabled Resident Special Lifetime License to Freshwater Fish	$15.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Hunt)	no fee

Virginia Nonresident Licenses to Fish	
Type license	Fee
Nonresident License to Freshwater Fish	$46.00
Nonresident License to Freshwater Fish in Designated Stocked Trout Waters	$46.00
Nonresident License to Freshwater and Saltwater Fish	$70.00
Nonresident Fishing License for Partially Disabled Veterans	$23.00
Nonresident Annual Fishing License for Totally and Permanently Disabled Veterans	$11.50
Nonresident License to Freshwater Fish for One Day	$7.00
Nonresident License to Freshwater Fish for Five Consecutive Days	$20.00
Nonresident License to Freshwater and Saltwater Fish for Five Consecutive Days	$30.00
Nonresident Infant Lifetime License to Fish	$275.00
Nonresident Special Lifetime License to Freshwater Fish	~~$555.00~~ $580.00
Nonresident Special Lifetime License to in Fish in Designated Stocked Trout Waters	~~$555.00~~ $580.00

Miscellaneous Licenses or Permits to Fish	
Type license or permit	Fee
Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with Daily Use Fees	$7.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Hunt)	$17.00
Special Guest Fishing License	$60.00

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

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 USC §§ 1531-1543), as amended as of ~~August 4, 2016~~ [~~February 26,~~ May 7], 2019, and declares all species listed thereon to be endangered or threatened species in the Commonwealth. Pursuant to subdivision 12 of § 29.1-103 of the Code of Virginia, the director of the department is hereby delegated authority to propose adoption of modifications and amendments to the Federal Endangered and Threatened Species List in accordance with the procedures of §§ 29.1-501 and 29.1-502 of the Code of Virginia.

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

1. Fish:

Endangered

Dace, Tennessee	Phoxinus tennesseensis
Darter, sharphead	Etheostoma acuticeps
Darter, variegate	Etheostoma variatum
Sunfish, blackbanded	Enneacanthus chaetodon

Threatened:

Darter, Carolina	Etheostoma collis
Darter, golden	Etheostoma denoncourti
Darter, greenfin	Etheostoma chlorobranchium
Darter, sickle	Percina willliamsi
Darter, western sand	Ammocrypta clara
Madtom, orangefin	Noturus gilberti
Paddlefish	Polyodon spathula
Shiner, emerald	Notropis atherinoides
Shiner, steelcolor	Cyprinella whipplei
Shiner, whitemouth	Notropis alborus

2. Amphibians:

Endangered:

Salamander, eastern tiger	Ambystoma tigrinum

Threatened:

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

3. Reptiles:

Endangered:

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

Threatened:

Lizard, eastern glass	Ophisaurus ventralis
Turtle, wood	Glyptemys insculpta

4. Birds:

Endangered:

Plover, Wilson's	Charadrius wilsonia
Rail, black	Laterallus jamaicensis
Wren, Bewick's	Thryomanes bewickii bewickii

Threatened:

Falcon, peregrine	Falco peregrinus
Shrike, loggerhead	Lanius ludovicianus
Sparrow, Bachman's	Aimophila aestivalis
Sparrow, Henslow's	Ammodramus henslowii
Tern, gull-billed	Sterna nilotica

5. Mammals:

Endangered:

Bat, Rafinesque's eastern big-eared	Corynorhinus rafinesquii macrotis
Bat, little brown	Myotis lucifugus
Bat, tri-colored	Perimyotis subflavus
Hare, snowshoe	Lepus americanus
Shrew, American water	Sorex palustris
Vole, rock	Microtus chrotorrhinus

6. Mollusks:

Endangered:

Coil, rubble	Helicodiscus lirellus
Coil, shaggy	Helicodiscus diadema
Deertoe	Truncilla truncata
Elephantear	Elliptio crassidens
Elimia, spider	Elimia arachnoidea
Floater, brook	Alasmidonta varicosa
Ghostsnail, thankless	Holsingeria unthanksensis

Heelsplitter, Tennessee	Lasmigona holstonia
Lilliput, purple	Toxolasma lividus
Mussel, slippershell	Alasmidonta viridis
Pigtoe, Ohio	Pleurobema cordatum
Pigtoe, pyramid	Pleurobema rubrum
Springsnail, Appalachian	Fontigens bottimeri
Springsnail (no common name)	Fontigens morrisoni
Supercoil, spirit	Paravitrea hera

Threatened:

Floater, green	Lasmigona subviridis
Papershell, fragile	Leptodea fragilis
Pigtoe, Atlantic	Fusconaiamasoni
Pimpleback	Quadrula pustulosa pustulosa
Pistolgrip	Tritogonia verrucosa
Riversnail, spiny	Iofluvialis
Sandshell, black	Ligumia recta
Supercoil, brown	Paravitrea septadens

7. Arthropods:

Threatened:

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

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

D. The incidental take of certain species may occur in certain circumstances and with the implementation of certain conservation practices as described in this subsection:

Species	Location	Allowable Circumstances	Required Conservation Measures	Expected Incidental Take
Little brown bat Tri-colored bat	Statewide	Human health risk – need for removal of individual animals from human-habited structures.	Between May 15 and August 31, no exclusion of bats from maternity colonies, except for human health concerns. DGIF-permitted nuisance wildlife control operator with DGIF-recognized certification in techniques associated with removal of bats. Use of exclusion devices that allow individual animals to escape. Manual collection of individual animals incapable of sustaining themselves; transport to a willing and appropriately permitted wildlife rehabilitator.	Little to no direct lethal taking expected.
		Public safety or property damage risk – need for tree removal, application of prescribed fire, or other land management	Hibernacula: no tree removal, use of prescribed fire, or other land management action within a 250-foot radius buffer area from December 1 through April 30. Between September 1 and November 30, increase the buffer to a 1/4-mile radius with the following conditions: for timber harvests greater	Little to no direct lethal taking expected.

		actions affecting known roosts; removal of animals from known roosts.	than 20 acres, retain snags and wolf trees (if not presenting public safety or property risk) and small tree groups up to 15 trees of 3-inch diameter at breast height (dbh) or greater, one tree group per 20 acres. Otherwise, document the need (public safety, property damage risk) for tree removal during this period and verify that no known roost trees exist in the buffer area. Tree removal and prescribed fire are permitted outside of these dates. Known roost trees: no tree removal, use of prescribed fire, or other land management action within a 150-foot radius buffer area from June 1 through July 31, if possible. Otherwise, document public safety or property damage risk. DGIF-permitted nuisance wildlife control operator with DGIF-recognized certification in techniques associated with removal of bats. Use of exclusion devices that allow individual animals to escape. Manual collection of individual animals incapable of sustaining themselves; transport to a willing and appropriately permitted wildlife rehabilitator.	
		Facility or project operations when conducted in accordance with a DGIF-approved plan associated with these species.	Development and implementation of a plan that avoids, minimizes, and mitigates incidental take associated with an otherwise lawful activity. The plan shall include, but not be limited to, documenting the specific condition or action, the specific mitigation to be taken, and the expected incidental take.	Little to no direct lethal taking expected.

4VAC15-20-240. Use of drones for certain activities prohibited.

A. Except as authorized by the director or the director's designee, it shall by unlawful at any time for any person to use a drone or unmanned aircraft:

1. To hunt, take, or kill a wild animal or to drive or herd any wild animal for the purpose of hunting, trapping, or killing.

2. To attempt to locate, surveil, aid, or assist in the hunting of any wild animal.

3. To harass any wild animal. For the purposes of this section, "harass" means any action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns, which include breeding, feeding, or sheltering.

4. On department-owned lands, except that department employees and contractors or agents acting on behalf of the department may use drones or other unmanned aircraft when addressing human safety, law enforcement, management, or other needs approved by the department.

B. No part of this section shall be construed to restrict the use of drones or other unmanned aircraft for wildlife management activities conducted or authorized by the department; by [~~United States government agency~~] employees [of the United States government or any of its

agencies] whose responsibility includes fisheries and wildlife management; or by county, city, or town animal control officers in the performance of their official duties [~~related to public health concerns or problem wildlife~~].

DOCUMENTS INCORPORATED BY REFERENCE (4VAC15-20)

List of Native and Naturalized Fauna of Virginia, 2018, Virginia Department of Game and Inland Fisheries

~~Federal Endangered and Threatened Animal Species as of August 4, 2016~~

[~~Federal Endangered and Threatened Animal Species as of February 26, 2019~~

Federal Endangered and Threatened Animal Species as of May 7, 2019]

VA.R. Doc. No. R19-5933; Filed June 5, 2019, 2:32 p.m.

Final Regulation

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

Title of Regulation: **4VAC15-90. Game: Deer (amending 4VAC15-90-10, 4VAC15-90-70, 4VAC15-90-80, 4VAC15-90-89, 4VAC15-90-90, 4VAC15-90-91, 4VAC15-90-293).**

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

Effective Date: August 1, 2019.

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

Summary:

The amendments (i) adjust deer bag limits in localities across the Commonwealth and (ii) clarify prohibitions on feeding cervids and transporting cervid parts.

4VAC15-90-10. Open season; generally.

A. It shall be lawful to hunt deer in the following localities, including the cities and towns therein, during the following seasons, all dates inclusive.

Locality	Season
Accomack County	Saturday prior to the third Monday in November through the first Saturday in January
Albemarle County	Saturday prior to the third Monday in November through the first Saturday in January
Alleghany County	Saturday prior to the third Monday in November and for 14 consecutive days following
Amelia County	Saturday prior to the third Monday in November through the first Saturday in January
Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye ~~River)~~ River, except on national forest lands)	Saturday prior to the third Monday in November and for ~~14~~ 28 consecutive days following
Amherst County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Amherst County (east of Business U.S. 29, as defined above)	Saturday prior to the third Monday in November through the first Saturday in January
Appomattox County	Saturday prior to the third Monday in November through the first Saturday in January
Arlington County	Saturday prior to the third Monday in November through the first Saturday in January
Arlington County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Augusta County	Saturday prior to the third Monday in November and for 14 consecutive days following
Bath County	Saturday prior to the third Monday in November and for 14 consecutive days following
Bedford County (except on national forest lands)	Saturday prior to the third Monday in November and for ~~14~~ 28 consecutive days following

Bedford County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Bland County	Saturday prior to the third Monday in November and for 14 consecutive days following
Botetourt County	Saturday prior to the third Monday in November and for 14 consecutive days following
Brunswick County	Saturday prior to the third Monday in November through the first Saturday in January
Buchanan County	Saturday prior to the third Monday in November and for 14 consecutive days following
Buckingham County	Saturday prior to the third Monday in November through the first Saturday in January
Campbell County	Saturday prior to the third Monday in November through the first Saturday in January
Caroline County	Saturday prior to the third Monday in November through the first Saturday in January
Carroll County	Saturday prior to the third Monday in November and for 14 consecutive days following
Charles City County	Saturday prior to the third Monday in November through the first Saturday in January
Charlotte County	Saturday prior to the third Monday in November through the first Saturday in January
Chesapeake (City of)	October 1 through November 30
Chesterfield County	Saturday prior to the third Monday in November through the first Saturday in January
Clarke County	Saturday prior to the third Monday in November through the first Saturday in January
Craig County	Saturday prior to the third Monday in November and for 14 consecutive days following
Culpeper County (except Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November through the first Saturday in January
Culpeper County (Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November and for 14 consecutive days following
Cumberland County	Saturday prior to the third Monday in November through the first Saturday in January
Dickenson County	Saturday prior to the third Monday in November and for 14 consecutive days following
Dinwiddie County	Saturday prior to the third Monday in November through the first Saturday in January
Essex County	Saturday prior to the third Monday in November through the first Saturday in January
Fairfax County	Saturday prior to the third Monday in November through the first Saturday in January
Fairfax County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Fauquier County (except Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November through the first Saturday in January
Fauquier County (Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November and for 14 consecutive days following
Floyd County	Saturday prior to the third Monday in November and for 28 consecutive days following
Fluvanna County	Saturday prior to the third Monday in November through the first Saturday in January
Franklin County	Saturday prior to the third Monday in November and for 28 consecutive days following

Frederick County (non-national forest lands)	Saturday prior to the third Monday in November through the first Saturday in January
Frederick County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Giles County	Saturday prior to the third Monday in November and for 14 consecutive days following
Gloucester County	Saturday prior to the third Monday in November through the first Saturday in January
Goochland County	Saturday prior to the third Monday in November through the first Saturday in January
Grayson County	Saturday prior to the third Monday in November and for 14 consecutive days following
Greene County	Saturday prior to the third Monday in November through the first Saturday in January
Greensville County	Saturday prior to the third Monday in November through the first Saturday in January
Halifax County	Saturday prior to the third Monday in November through the first Saturday in January
Hanover County	Saturday prior to the third Monday in November through the first Saturday in January
Henrico County	Saturday prior to the third Monday in November through the first Saturday in January
Henry County	Saturday prior to the third Monday in November and for 28 consecutive days following
Highland County	Saturday prior to the third Monday in November and for 14 consecutive days following
Isle of Wight County	Saturday prior to the third Monday in November through the first Saturday in January
James City County	Saturday prior to the third Monday in November through the first Saturday in January
King and Queen County	Saturday prior to the third Monday in November through the first Saturday in January
King George County	Saturday prior to the third Monday in November through the first Saturday in January
King William County	Saturday prior to the third Monday in November through the first Saturday in January
Lancaster County	Saturday prior to the third Monday in November through the first Saturday in January
Lee County	Saturday prior to the third Monday in November and for 14 consecutive days following
Loudoun County	Saturday prior to the third Monday in November through the first Saturday in January
Loudoun County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Louisa County	Saturday prior to the third Monday in November through the first Saturday in January
Lunenburg County	Saturday prior to the third Monday in November through the first Saturday in January
Madison County	Saturday prior to the third Monday in November through the first Saturday in January
Mathews County	Saturday prior to the third Monday in November through the first Saturday in January
Mecklenburg County	Saturday prior to the third Monday in November through the first Saturday in January
Middlesex County	Saturday prior to the third Monday in November through the first Saturday in January
Montgomery County	Saturday prior to the third Monday in November and for 14 consecutive days following

Nelson County (west of Route ~~151)~~ 151, except on national forest lands)	Saturday prior to the third Monday in November and for ~~14~~ 28 consecutive days following
Nelson County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Nelson County (east of Route 151)	Saturday prior to the third Monday in November through the first Saturday in January
New Kent County	Saturday prior to the third Monday in November through the first Saturday in January
Northampton County	Saturday prior to the third Monday in November through the first Saturday in January
Northumberland County	Saturday prior to the third Monday in November through the first Saturday in January
Nottoway County	Saturday prior to the third Monday in November through the first Saturday in January
Orange County	Saturday prior to the third Monday in November through the first Saturday in January
Page County	Saturday prior to the third Monday in November and for 14 consecutive days following
Patrick County	Saturday prior to the third Monday in November and for 28 consecutive days following
Pittsylvania County	Saturday prior to the third Monday in November through the first Saturday in January
Powhatan County	Saturday prior to the third Monday in November through the first Saturday in January
Prince Edward County	Saturday prior to the third Monday in November through the first Saturday in January
Prince George County	Saturday prior to the third Monday in November through the first Saturday in January
Prince William County	Saturday prior to the third Monday in November through the first Saturday in January
Prince William County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Pulaski County (except on New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin)	Saturday prior to the third Monday in November and for 14 consecutive days following
Pulaski County (New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin)	Saturday prior to the second Monday in November through the first Saturday in January
Rappahannock County	Saturday prior to the third Monday in November through the first Saturday in January
Richmond County	Saturday prior to the third Monday in November through the first Saturday in January
Roanoke County	Saturday prior to the third Monday in November and for 14 consecutive days following
Rockbridge County	Saturday prior to the third Monday in November and for 14 consecutive days following
Rockingham County	Saturday prior to the third Monday in November and for 14 consecutive days following
Russell County	Saturday prior to the third Monday in November and for 14 consecutive days following
Scott County	Saturday prior to the third Monday in November and for 14 consecutive days following
Shenandoah County	Saturday prior to the third Monday in November and for 14 consecutive days following
Smyth County	Saturday prior to the third Monday in November and for 14 consecutive days following
Southampton County	Saturday prior to the third Monday in November through the first Saturday in January

Spotsylvania County	Saturday prior to the third Monday in November through the first Saturday in January
Stafford County	Saturday prior to the third Monday in November through the first Saturday in January
Suffolk (City of) (east of Dismal Swamp Line)	October 1 through November 30
Suffolk (City of) (west of Dismal Swamp Line)	Saturday prior to the third Monday in November through the first Saturday in January
Surry County	Saturday prior to the third Monday in November through the first Saturday in January
Sussex County	Saturday prior to the third Monday in November through the first Saturday in January
Tazewell County	Saturday prior to the third Monday in November and for 14 consecutive days following
Virginia Beach (City of)	October 1 through November 30
Warren County	Saturday prior to the third Monday in November and for 14 consecutive days following
Washington County	Saturday prior to the third Monday in November and for 14 consecutive days following
Westmoreland County	Saturday prior to the third Monday in November through the first Saturday in January
Wise County	Saturday prior to the third Monday in November and for 14 consecutive days following
Wythe County	Saturday prior to the third Monday in November and for 14 consecutive days following
York County	Saturday prior to the third Monday in November through the first Saturday in January

B. Except as provided in subsection A of this section, east of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November through the first Saturday in January, both dates inclusive, within the incorporated limits of any city or town that allows deer hunting.

C. Except as provided in subsection A of this section, west of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November and for 14 consecutive days following within the incorporated limits of any city or town that allows deer hunting.

4VAC15-90-70. Archery hunting.

A. It shall be lawful to hunt deer during the early special archery season with archery equipment or a slingbow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with archery equipment or a slingbow:

1. From the Sunday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, ~~in~~ (i) in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County); (ii) in the Counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), and Patrick; (iii) on the Chester F. Phelps Wildlife Management Area; and (iv) on national forest lands in Frederick County.

2. From December 1 through the first Saturday in January, both dates inclusive, in the Cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section ~~(except on PALS (Public Access Lands) in Dickenson County where it shall be unlawful to take antlerless deer during the special archery seasons provided for in subsections A and B of this section)~~.

D. It shall be unlawful to carry firearms while hunting with archery equipment during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-90-80, may be in the possession of a properly licensed muzzleloading gun hunter when and where a special archery deer season overlaps a special muzzleloading deer season.

E. It shall be unlawful to use dogs when hunting with archery equipment during any special archery season, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

F. It shall be lawful to hunt antlerless deer during the special urban archery season with archery equipment or a slingbow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the Sunday following the first Saturday in January through the last Sunday in March, both dates inclusive, within

the incorporated limits of any city or town in the Commonwealth (except on national forest and department-owned lands) and counties with a human population density of 300 persons per square mile or more (except on national forest and department-owned lands), provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season. When consistent with the department's deer management objectives and subject to the director's approval, a participating county may exclude from this season a geographic area ~~or areas~~ by submitting a clear description of such area ~~or areas~~ in a certified letter to the department prior to April 1.

G. It shall be lawful to hunt antlerless deer during the special urban archery season with archery equipment or a slingbow during dates specified in subsection F of this section within the boundaries of any common interest community as defined in § 55-528 of the Code of Virginia provided that (i) the association submits by certified letter to the department prior to July 1 the association's request to participate in the special urban archery season and (ii) the department approves such request.

1. The special urban archery season will in no way supersede any local ordinance, any restriction in the association's governing documents, or the requirement to obtain a landowner's permission to hunt.

2. An association no longer participating in the special urban archery season shall submit notice of the association's intent not to participate in the special urban archery season. The association shall submit the certified letter to the department prior to July 1.

3. At its discretion, the department may suspend or revoke the special urban archery season in any association upon written notice to the association.

For the purposes of this subsection, "association" means the governing board or the authorized agent of the governing board of an association of property owners, condominium unit owners, or proprietary lessees.

~~G.~~ H. It shall be lawful to hunt antlerless deer during the special antlerless archery season with archery equipment or a slingbow from the Monday following the last Sunday in March through the last Sunday in April, both dates inclusive, in the Counties of Arlington, Fairfax, Loudoun, and Prince William (including the cities and towns within).

4VAC15-90-80. Muzzleloading gun hunting.

A. It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted, except in the ~~cities~~ Cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns starting 21 consecutive days immediately prior to and on the first Saturday in January:

1. In all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County);

2. East of the Blue Ridge Mountains in the Counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), and Patrick;

3. On national forest lands in Frederick County; and

4. In the Cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season east of the Blue Ridge Mountains unless otherwise noted in this subsection:

1. Deer of either sex may be taken on the second Saturday only of the early special muzzleloading season on state forest lands, state park lands (except Occoneechee State Park), department-owned lands (except on [~~Featherfin and~~] Merrimac Farm Wildlife Management [Area) ~~Areas)~~], and Philpott Reservoir.

2. Antlered bucks only—no either-sex deer hunting days during the early special muzzleloading season on national forest lands in Amherst, Bedford, and Nelson Counties.

D. Deer of either sex may be taken on the second Saturday only during the early special muzzleloading season west of the Blue Ridge Mountains unless otherwise noted in this subsection~~:~~.

1. Deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd Counties and on private lands in Botetourt, Carroll, Frederick, Grayson, Montgomery, Pulaski, Roanoke, Rockingham (east of Routes 613 and 731), Scott, Shenandoah, ~~and~~ Warren, and Wythe Counties.

~~2. Deer of either sex may be taken on the second Saturday and the last five days of the early muzzleloading season on private lands in Botetourt County.~~

~~3.~~ 2. Antlered bucks only—no either-sex deer hunting days during the early special muzzleloading season in Buchanan, Dickenson, Lee, Russell, Tazewell, and Wise

Counties and on national forest lands in Alleghany, Bland, Craig, Frederick, Giles, Grayson, Montgomery, Page, Pulaski, Rockingham, Scott, Shenandoah, and Warren Counties, and on national forest and department-owned lands in Augusta, Bath, Botetourt, Carroll, Highland (except Highland Wildlife Management Area), Roanoke, Rockbridge, Smyth, Washington, and Wythe Counties and on Channels State Forest, Grayson Highlands State Park, Hungry Mother State Park, and on private lands west of Routes 613 and 731 in Rockingham County.

E. Deer of either sex may be taken during the last six days of the late special muzzleloading season unless otherwise listed in this subsection:

1. Deer of either sex may be taken full season during the entire late special muzzleloading season in the Counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River, except on national forest lands), Bedford (except on national forest lands), Floyd, Franklin, Henry, Nelson (west of Route 151, except on national forest lands), and Patrick and on private lands in Botetourt, Carroll, Grayson, Montgomery, Pulaski, Roanoke, Rockingham (east of Routes 613 and 731), Shenandoah, ~~and~~ Warren, and Wythe Counties.

2. Deer of either sex may be taken the last day only during the late special muzzleloading season in Alleghany, Bath, Dickenson, Highland, Lee, Russell, Tazewell, and Wise Counties and on national forest lands in Amherst, Bedford, Bland, Craig, Frederick, Giles, Grayson, Montgomery, Nelson, Page, Pulaski, Rockingham, Scott, Shenandoah, and Warren Counties, and on national forest and department-owned lands in Augusta, Botetourt, Carroll, Roanoke, Rockbridge, Smyth, Washington, and Wythe Counties and on private lands west of Routes 613 and 731 in Rockingham County, Channels State Forest, ~~and~~ Grayson Highlands State Park, and Hungry Mother State Park.

3. Antlered bucks only—no either-sex deer hunting days during the late special muzzleloading season in Buchanan County.

F. Deer of either sex may be taken full season during the special muzzleloading seasons within the incorporated limits of any city or town in the Commonwealth that allows deer hunting except in the Cities of Chesapeake, Suffolk, and Virginia Beach.

G. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

H. A muzzleloading gun, for the purpose of this section, means a single shot weapon, [.45 caliber or larger,] firing a single projectile or sabot (with a .35 caliber or larger projectile) ~~of the same caliber~~ [where the propellant and projective are] loaded from the muzzle of the weapon ~~and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder)~~.

I. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

4VAC15-90-89. Earn a buck (EAB).

For the purposes of this section, the term "license year" defines the period between July 1 and June 30 of the following year.

Albemarle County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Albemarle County prior to taking at least one antlerless deer on private lands in Albemarle County, and it shall be unlawful to take a third antlered deer on private lands in Albemarle County prior to taking at least two antlerless deer on private lands in Albemarle County.

Arlington County. During a license year, it shall be unlawful to take a second antlered deer in Arlington County prior to taking at least two antlerless deer in Arlington County, and it shall be unlawful to take a third antlered deer in Arlington County prior to taking at least three antlerless deer in Arlington County.

Bedford County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Bedford County prior to taking at least one antlerless deer on private lands in Bedford County, and it shall be unlawful to take a third antlered deer on private lands in Bedford County prior to taking at least two antlerless deer on private lands in Bedford County.

Clarke County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Clarke County prior to taking at least ~~one~~ two antlerless deer on private lands in Clarke County.

Culpeper County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Culpeper County prior to taking at least one antlerless deer on private lands in Culpeper County, and it shall be unlawful to take a third antlered deer on private lands in Culpeper County prior to taking at least two antlerless deer on private lands in Culpeper County.

Fairfax County. During a license year, it shall be unlawful to take a second antlered deer in Fairfax County prior to taking at least two antlerless deer in Fairfax County, and it shall be unlawful to take a third antlered deer in Fairfax County prior to taking at least three antlerless deer in Fairfax County.

Fauquier County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private

lands in Fauquier County prior to taking at least one antlerless deer on private lands in Fauquier County, and it shall be unlawful to take a third antlered deer on private lands in Fauquier County prior to taking at least two antlerless deer on private lands in Fauquier County.

Floyd County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Floyd County prior to taking at least one antlerless deer on private lands in Floyd County.

Franklin County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Franklin County prior to taking at least one antlerless deer on private lands in Franklin County, and it shall be unlawful to take a third antlered deer on private lands in Franklin County prior to taking at least two antlerless deer on private lands in Franklin County.

Frederick County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Frederick County prior to taking at least ~~one~~ two antlerless deer on private lands in Frederick County.

Grayson County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Grayson County prior to taking at least one antlerless deer on private lands in Grayson County.

Hanover County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Hanover County prior to taking at least one antlerless deer on private lands in Hanover County, and it shall be unlawful to take a third antlered deer on private lands in Hanover County prior to taking at least two antlerless deer on private lands in Hanover County.

Henrico County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Henrico County prior to taking at least one antlerless deer on private lands in Henrico County, and it shall be unlawful to take a third antlered deer on private lands in Henrico County prior to taking at least two antlerless deer on private lands in Henrico County.

James City County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in James City County prior to taking at least one antlerless deer on private lands in James City County, and it shall be unlawful to take a third antlered deer on private lands in James City County prior to taking at least two antlerless deer on private lands in James City County.

Loudoun County. During a license year, it shall be unlawful to take a second antlered deer in Loudoun County prior to taking at least two antlerless deer in Loudoun County, and it shall be unlawful to take a third antlered deer in Loudoun County prior to taking at least three antlerless deer in Loudoun County.

Montgomery County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Montgomery County prior to taking at least one antlerless deer on private lands in Montgomery County.

Prince George County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Prince George County prior to taking at least one antlerless deer on private lands in Prince George County, and it shall be unlawful to take a third antlered deer on private lands in Prince George County prior to taking at least two antlerless deer on private lands in Prince George County.

Prince William County except on Department of Defense lands. During a license year, it shall be unlawful to take a second antlered deer in Prince William County (except on Department of Defense lands) prior to taking at least two antlerless deer in Prince William County (except on Department of Defense lands), and it shall be unlawful to take a third antlered deer in Prince William County (except on Department of Defense lands) prior to taking at least three antlerless deer in Prince William County (except on Department of Defense lands).

Pulaski County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Pulaski County prior to taking at least one antlerless deer on private lands in Pulaski County.

Rappahannock County. During a license year, it shall be unlawful to take a second antlered deer in Rappahannock County prior to taking at least one antlerless deer in Rappahannock County, and it shall be unlawful to take a third antlered deer in Rappahannock County prior to taking at least two antlerless deer in Rappahannock County.

Roanoke County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Roanoke County prior to taking at least one antlerless deer on private lands in Roanoke County.

Shenandoah County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Shenandoah County prior to taking at least one antlerless deer on private lands in Shenandoah County.

Warren County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in Warren County prior to taking at least ~~one~~ two antlerless deer on private lands in Warren County.

York County on private lands. During a license year, it shall be unlawful to take a second antlered deer on private lands in York County prior to taking at least one antlerless deer on private lands in York County, and it shall be unlawful to take a third antlered deer on private lands in York County prior to taking at least two antlerless deer on private lands in York County.

Cities and towns. During a license year in any town or city (except Chesapeake, Suffolk, and Virginia Beach) east of the Blue Ridge Mountains, it shall be unlawful to take a second antlered deer prior to taking at least one antlerless deer in that town or city, and it shall be unlawful to take a third antlered deer prior to taking at least two antlerless deer in that town or city. During a license year in any town or city west of the Blue Ridge Mountains, it shall be unlawful to take a second antlered deer prior to taking at least one antlerless deer in that town or city.

4VAC15-90-90. Bag limit, bonus deer permits [,] and special antlerless provision for youth hunters.

A. The bag limit for deer east of the Blue Ridge Mountains (except on national forest lands in Amherst, Bedford, and Nelson Counties) is two per day, six per license year, three of which must be antlerless unless otherwise noted in this subsection.

1. The daily bag limit for deer is unlimited in the Counties (including the cities and towns within) of Arlington, Fairfax, Loudoun, and Prince William.
2. Only one deer per day may be taken on national forest lands in Amherst, Bedford, and Nelson Counties.

3. Only one elk per day may be taken east of the Blue Ridge Mountains.

B. The bag limit for deer west of the Blue Ridge Mountains ~~and on national forest lands in Amherst, Bedford, and Nelson Counties~~ is ~~one~~ two per day, five per license year, three of which must be antlerless unless otherwise noted in this subsection.

1. ~~The daily bag limit for deer is two per day on private lands in the Counties (including the cities and towns within) of Clarke, Frederick, Roanoke, Shenandoah, and Warren~~ Only one deer per day may be taken on national forest, department-owned, and department-managed lands west of the Blue Ridge Mountains.

2. If a deer hunter kills two antlered bucks in a license year in Alleghany, Augusta, Bath, Highland, or Rockbridge~~, Rockingham, or Shenandoah~~ County, at least one of the antlered bucks must have at least four antler points, one inch or longer, on one side of the antlers. This subdivision shall not apply to any county designated by the department within 25 miles of a confirmed detection of Chronic Wasting Disease.

3. Only one elk per day may be taken west of the Blue Ridge Mountains.

C. Except as noted in subsection E of this section, antlerless deer may be taken only during designated either-sex deer hunting days during the special archery seasons, special muzzleloading seasons, and the general firearms season.

D. Bonus deer permits shall be valid on private land in counties and cities where deer hunting is permitted (except Buchanan, Dickenson, and Wise Counties) during the special archery seasons, special muzzleloading seasons, and the general firearms season. Bonus deer permits shall be valid on public lands, including state parks, state forests, national wildlife refuges, military areas, etc., as authorized by the managing agency. Unless otherwise posted or authorized in writing for wildlife management areas by the department, or for national forest lands by the U.S. Forest Service, the use of bonus permits is prohibited on department-owned and national forest lands. Bonus deer permits shall be valid for antlerless deer only. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.

E. Deer hunters 15 years of age and ~~under~~ younger, including those exempt from purchasing a hunting license and holders of an apprentice hunting license, when in compliance with all applicable laws and license requirements, may take one antlerless deer per license year on days other than designated either-sex deer hunting days during the special muzzleloading seasons or the general firearms season in all counties ~~that have at least one either-sex deer hunting day during the general firearms deer season~~.

4VAC15-90-91. General firearms season either-sex deer hunting days.

A. During the general firearms deer season, deer of either sex may be taken within:

Accomack County: full season.

Albemarle County: full season.

Alleghany County: the second Saturday and the last day.

-National forest lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Amelia County: the second and third Saturdays and the last 13 days.

-Amelia WMA: the second and third Saturdays and the last six days.

Amherst County (east of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): the second and third Saturdays and the last 29 days.

Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): full season.

-National forest lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Appomattox County: the second and third Saturdays and the last six days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: [the second and third Saturdays and the last 29 days ~~full season~~].

Arlington County: full season.

Augusta County: ~~the second Saturday and the last six days~~ full season.

-National forest and department-owned lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Bath County: the second Saturday and the last day.

-National forest and department-owned lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Bedford County: full season.

-National forest lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Bland County: the second Saturday and the last day.

-National forest lands: the second Saturday and the last day.

Botetourt County: full season.

-National forest and department-owned lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Brunswick County: the second and third Saturdays and the last six days.

Buchanan County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Buckingham County: the second and third Saturdays and the last six days.

-Horsepen Lake WMA: the second and third Saturdays and the last six days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: [the second and third Saturdays and the last 29 days ~~full season~~].

Campbell County (east of Norfolk Southern Railroad): the second and third Saturdays and the last 29 days. Campbell County (west of Norfolk Southern Railroad): full season.

Caroline County: the second and third Saturdays and the last six days.

-Mattaponi WMA: the second and third Saturdays and the last six days.

Carroll County: full season.

-National forest and department-owned lands: the second Saturday and the last day.

Charles City County: the second and third Saturdays and the last ~~13~~ 29 days.

-Chickahominy WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Charlotte County: the second and third Saturdays and the last six days.

Chesapeake (City of): the second and third Saturdays and the last 13 days.

Chesterfield County: the second and third Saturdays and the last six days.

Clarke County: full season.

Craig County: full season.

-National forest and department-owned lands: the second Saturday and the last day.

Culpeper County: full season.

-Chester F. Phelps WMA: the second Saturday and the last day.

Cumberland County: the second and third Saturdays and the last 13 days.

-Cumberland State Forest: the second and third Saturdays.

Dickenson County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Dinwiddie County: the second and third Saturdays and the last six days.

Essex County: the second and third Saturdays and the last six days.

Fairfax County: full season.

Fauquier County: full season.

-G. Richard Thompson WMA: the second Saturday and the last day.

-Chester F. Phelps WMA: the second Saturday and the last day.

Floyd County: full season.

Fluvanna County: second and third Saturdays and the last 13 days.

Franklin County: full season.

-Philpott Reservoir: the second Saturday and the last six days.

-Turkeycock Mountain WMA: the second Saturday and the last six days.

Frederick County: full season.

-National forest lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Giles County: full season.

-National forest lands: the second Saturday and the last day.

Gloucester County: the second and third Saturdays and the last six days.

Goochland County: the second and third Saturdays and the last 29 days.

Grayson County: full season.

-National forest lands and Grayson Highlands State Park: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Greene County: full season.

Greensville County: the second and third Saturdays and the last six days.

Halifax County: the second and third Saturdays and the last 13 days.

Hanover County: full season.

Henrico County: full season.

Henry County: the second and third Saturdays and the last 13 days.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six days.

-Turkeycock Mountain WMA: the second Saturday and the last six days.

Highland County: the second Saturday and the last day.

-National forest lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

-Department-owned lands: the second Saturday and the last day.

Isle of Wight County: full season.

-Ragged Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

James City County: full season.

King and Queen County: the second and third Saturdays and the last six days.

King George County: the second and third Saturdays and the last 13 days.

King William County: the second and third Saturdays and the last six days.

Lancaster County: the second and third Saturdays and the last 13 days.

Lee County: the second Saturday and the last two days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Loudoun County: full season.

Louisa County: the second and third Saturdays and the last 29 days.

Lunenburg County: the second and third Saturdays and the last six days.

Madison County: full season.

-Rapidan WMA: the second and third Saturdays and the last 29 days.

Mathews County: the second and third Saturdays and the last six days.

Mecklenburg County: the second and third Saturdays and the last six days.

-Dick Cross WMA: the second and third Saturdays and the last six days.

Middlesex County: the second and third Saturdays and the last six days.

Montgomery County: full season.

-National forest lands: the second Saturday and the last day.

Nelson County (east of Route 151): the second and third Saturdays and the last 29 days.

-James River WMA: the second Saturday and the last six days.

Nelson County (west of Route 151): full season.

-National forest lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

New Kent County: the second and third Saturdays and the last ~~13~~ 29 days.

Northampton County: full season.

Northumberland County: the second and third Saturdays and the last 13 days.

Nottoway County: the second and third Saturdays and the last six days.

Orange County: full season.

Page County: the second Saturday and the last ~~two~~ six days.

-National forest lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Patrick County: the second and third Saturdays and the last 13 days.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six days.

Pittsylvania County (east of Norfolk Southern Railroad): the second and third Saturdays and the last 29 days.

-White Oak Mountain WMA: the second Saturday and the last day.

Pittsylvania County (west of Norfolk Southern Railroad): full season.

Powhatan County: the second and third Saturdays and the last ~~13~~ 29 days.

-Powhatan WMA: the second and third Saturdays and the last 13 days.

Prince Edward County: the second and third Saturdays and the last six days.

-Briery Creek WMA: the second and third Saturdays and the last six days.

-Featherfin WMA: [the second and third Saturdays and the last 29 days ~~full season~~].

-Prince Edward State Forest: the second and third Saturdays.

Prince George County: full season.

Prince William County: full season.

Pulaski County: full season.

-National forest lands: the second Saturday and the last day.

Rappahannock County: full season.

Richmond County: the second and third Saturdays and the last 13 days.

Roanoke County: full season.

-National forest and department-owned lands: ~~antlered bucks only-no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Rockbridge County: the second Saturday and the last two days.

-National forest and department-owned lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Rockingham County: full season.

-National forest lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

-Private lands west of Routes 613 and 731: the last day.

Russell County: the second Saturday and the last two days.

~~-Clinch Mountain WMA, Hidden Valley WMA,~~ -Department-owned lands and the Channels State Forest: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Scott County: the second Saturday and the last six days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Shenandoah County: full season.

-National forest lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Smyth County: ~~the second Saturday and the last six days~~ full season.

-National forest lands, ~~Clinch Mountain WMA,~~ department-owned lands, and Hungry Mother State Park: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Southampton County: full season.

Spotsylvania County: the second and third Saturdays and the last 29 days.

Stafford County: full season.

Suffolk (east of the Dismal Swamp Line): the second and third Saturdays and the last 13 days.

Suffolk (west of the Dismal Swamp Line): full season.

Surry County: full season.

-Carlisle and Stewart Tracts of the Hog Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Sussex County: full season.

-Big Woods WMA (including the Parkers Branch Tract) and Big Woods State Forest: the second and third Saturdays and the last six days.

Tazewell County: the second Saturday and the last two days.

-National forest and department-owned lands ~~and Clinch Mountain WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Virginia Beach (City of): the second and third Saturdays and the last 13 days.

Warren County: full season.

-National forest lands: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Washington County: the second Saturday and the last six days.

-National forest lands, department-owned lands, ~~Clinch Mountain WMA, Hidden Valley WMA,~~ and the Channels State Forest: ~~antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken~~ the last day.

Westmoreland County: the second and third Saturdays and the last 13 days.

Wise County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Wythe County: full season.

-National forest and department-owned lands ~~and Big Survey WMA~~: the second Saturday and the last day.

York County: full season.

B. Except as provided in the subsection A of this section, deer of either sex may be taken full season during the general firearms deer season within the incorporated limits of any city or town, state park, national wildlife refuge, or military installation that allows deer hunting or within any common interest community participating in the special urban archery season according to provisions of 4VAC15-90-70.

4VAC15-90-293. Unauthorized cervid parts, excretions, and carcass importation, movement, possession, and use.

A. ~~For the purposes of this section and~~ The following words or terms, when used in 4VAC15-40-285, this section, and 4VAC15-90-294, shall have the following meanings unless the context clearly indicates otherwise:

"Cervid" means any member of the deer family Cervidae, including ~~but not limited to~~ white-tailed deer, fallow deer, sika deer, elk, and reindeer.

"Import" means to transport a carcass or carcass parts, other than those outlined in subsection B of this section, into the Commonwealth in such a manner that the carcass or carcass parts are removed from their place of storage within a vehicle or other conveyance and placed or deposited within the Commonwealth. Deer harvested on properties that span the Commonwealth's boundary with an adjoining state shall not be considered imported.

B. No person shall import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating ~~from an enclosure intended to confine deer or elk or from any area designated by the department as a carcass restriction zone~~ outside of the Commonwealth, except that the following carcass parts may be imported and possessed:

1. Boned-out meat [~~that is cut and wrapped~~];

2. Quarters or other portions of meat with no part of the spinal column or skull attached;

3. Hides or capes with no skull attached;

4. Clean (no meat or tissue attached) skulls or skull plates with or without antlers attached;

5. Antlers (with no meat or tissue attached);

6. Upper canine teeth (buglers, whistlers, or ivories); and

7. Finished taxidermy products.

A legible label shall be affixed to packages or containers containing the allowed carcass parts bearing the following information: the species of animal, the state or province from where the animal originated, and the name and address of the person who either killed or ~~owned the animal~~ possesses the allowed parts in the Commonwealth.

C. Any person who imports into Virginia any deer carcass or parts described in subsection A of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

D. No person shall transport any carcass or part of a carcass of any cervid out of any area designated by the department as a disease ~~containment~~ management area, except that the carcass parts enumerated in subsection B of this section may be transported, and carcasses or parts may be transported directly to locations designated by the department, provided that such carcasses or parts are transported without unnecessary delay and secured within a vehicle ~~or vehicles~~ during transit. Provisions of this section shall not apply to employees of the department or another government agency, or their designees, working in an official disease investigation or management capacity.

E. No person shall for the purposes of taking or attempting to take, attracting, or scouting any wild animal in Virginia possess or use any substance or material that contains or purports to contain any excretion collected from a cervid, including feces, urine, blood, gland oil, or other bodily fluid.

VA.R. Doc. No. R19-5900; Filed June 3, 2019, 2:25 p.m.

Final Regulation

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

Title of Regulation: **4VAC15-240. Game: Turkey (amending 4VAC15-240-10, 4VAC15-240-20, 4VAC15-240-31, 4VAC15-240-51; adding 4VAC15-240-32).**

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

Effective Date: August 1, 2019.

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

Summary:

The amendments adjust wild turkey seasons in localities across the Commonwealth.

4VAC15-240-10. Open season; generally.

Except as otherwise specifically provided in ~~the sections appearing in~~ this chapter, it shall be lawful to hunt turkeys ~~from~~ 14 days immediately before the Saturday prior to the ~~last~~ first Monday in ~~October and for 13 days following~~ November; on Thanksgiving Day and the day before; on the Monday nearest December 2 through the last Saturday in December, both dates inclusive; and on the second Saturday in January and for 14 days following.

4VAC15-240-20. Open season; certain counties and areas; ~~Saturday prior to the last Monday in October and for 13 days following, and on Thanksgiving Day~~ two-week season.

It shall be lawful to hunt turkeys ~~on~~ 14 days immediately before the Saturday prior to the ~~last~~ first Monday in ~~October~~ November and ~~for 13 days following, and~~ on Thanksgiving Day in the ~~counties~~ Counties of Albemarle, Alleghany, Augusta, Bath, Greene, Highland, Madison, Page, Orange, and Rockingham~~, and Warren~~.

4VAC15-240-31. Open season; certain counties and areas; ~~Saturday prior to the last Monday in October and for 13 days following, on Thanksgiving Day, and on the Monday closest to December 2 and for 12 days following~~ four-week season.

It shall be lawful to hunt turkeys ~~on~~ 14 days immediately before the Saturday prior to the ~~last~~ first Monday in ~~October and for 13 days following~~ November, on Thanksgiving Day and the day before, and on the Monday closest to December 2 and for 12 days following in the ~~counties~~ Counties of Accomack, ~~Buchanan,~~ Amelia, Charles City, Dinwiddie, Gloucester, Greensville, Isle of Wight, James City, ~~King George, Lancaster,~~ Mathews, Middlesex, New Kent, Northampton, ~~Northumberland,~~ Powhatan, Prince George, ~~Richmond,~~ Southampton, Surry, Sussex, ~~Westmoreland,~~ and York (except on Camp Peary)~~,~~ and the City of Suffolk.

4VAC15-240-32. [~~Game: Turkey: open~~] Open season; certain counties and areas; six-week season.

It shall be lawful to hunt turkeys 14 days immediately before the Saturday prior to the first Monday in November; on Thanksgiving Day and the day before; on the Monday nearest December 2 and for 12 days following, both dates inclusive; and on the second Saturday in January and for 14 days following in the Counties of Amherst, Appomattox, Brunswick, Buchanan, Buckingham, Campbell, Charlotte, Chesterfield, Cumberland, Floyd, Fluvanna, Frederick, Goochland, Halifax, Hanover, Henrico, Henry, Louisa, Lunenburg, Mecklenburg, Nottoway, Patrick, Pittsylvania, Prince Edward, Shenandoah, Spotsylvania, Tazewell, and Warren.

4VAC15-240-51. Youth and apprentice hunter fall turkey hunting weekend.

In counties, cities, and areas with a fall turkey season, hunters 15 years of age and ~~under~~ younger and holders of an apprentice hunting license may hunt turkey on the ~~third~~ second Saturday in October and the following calendar day when in compliance with applicable license requirements and when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license. Adult hunters accompanying youth hunters or apprentice license holders on these days may assist with calling turkey but they shall not carry or discharge weapons. Youth and apprentice turkey hunters are limited on this weekend to one turkey per hunter.

VA.R. Doc. No. R19-5915; Filed June 3, 2019, 3:22 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-140, 9VAC25-260-170).**

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

Effective Date: Effective upon the filing of notice of approval by the U.S. Environmental Protection Agency with the Registrar of Regulations.

Agency Contact: David Whitehurst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4032, or email david.whitehurst@deq.virginia.gov.

Summary:

The amendments update Virginia's Water Quality Standards, including revising the bacteria criteria for human health protection in recreation waters, revising the cadmium criteria for the protection of freshwater and saltwater aquatic life, and updating 94 human health criteria parameters.

The proposed amendments to 9VAC25-260-155 to update the ammonia criteria for the protection of freshwater aquatic life as well as implementation issues and impacts to regulated dischargers were deferred by the board and are not part of this regulatory action.

Following are the other substantive changes made since the proposed action was published:

• Changing the criteria value of butyl benzyl phthalate for "Public Water Supplies" and "All Other Surface Waters" to 1.0 ug/L to conform to the same carcinogenicity risk level (10-5) used for all other carcinogens.

• Changing 2-(2,4,5 Trichlorophenoxy) propionic acid (Silvex) for "Public Water Supplies" and "All Other Surface Waters" to 100 ug/L and 400 ug/L, respectively.

• Revising the bacteria standard so that it specifies a 90-day duration for assessment of both the geometric mean and the statistical threshold value.

• Adding language to cover the type and frequency of bacterial effluent monitoring at permitted discharges requiring disinfection and retaining the secondary contact recreation criteria language stricken at proposed.

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.

9VAC25-260-140. Criteria for surface water.

A. Instream water quality conditions shall not be acutely[1] or chronically[2] toxic except as allowed in 9VAC25-260-20 B (mixing zones). The following are definitions of acute and chronic toxicity conditions:

"Acute toxicity" means an adverse effect that usually occurs shortly after exposure to a pollutant. Lethality to an organism is the usual measure of acute toxicity. Where death is not easily detected, immobilization is considered equivalent to death.

"Chronic toxicity" means an adverse effect that is irreversible or progressive or occurs because the rate of injury is greater than the rate of repair during prolonged exposure to a pollutant. This includes low level, long-term effects such as reduction in growth or reproduction.

B. The following table is a list of numerical water quality criteria for specific parameters.

Table of Parameters[6, 7]						
PARAMETER CAS Number	USE DESIGNATION					
	AQUATIC LIFE				HUMAN HEALTH	
	FRESHWATER		SALTWATER		Public Water Supply[3]	All Other Surface Waters[4]
	Acute[1]	Chronic[2]	Acute[1]	Chronic[2]		
Acenapthene (µg/l) 83329					~~670~~ 70	~~990~~ 90
Acrolein (µg/l) 107028	3.0	3.0			~~6.1~~ 3	~~9.3~~ 400
Acrylonitrile (µg/l) 107131 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.51~~ 0.61	~~2.5~~ 70
Aldrin (µg/l) 309002 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	3.0		1.3		~~0.00049~~ 0.0000077	~~0.00050~~ 0.0000077
Ammonia (µg/l) 766-41-7 Chronic criterion is a 30-day average concentration not to be exceeded more than once every three years on the average.(see 9VAC25-260-155)						
Anthracene (µg/l) 120127					~~8,300~~ 300	~~40,000~~ 400
Antimony (µg/l) 7440360					5.6	640
Arsenic (µg/l)[5] 7440382	340	150	69	36	10	
Bacteria (see 9VAC25-260-160 and 9VAC25-260-170)						
Barium (µg/l) 7440393					2,000	
Benzene (µg/l) 71432 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~22~~ 5.8	~~510~~ 160

Benzidine (µg/l) 92875 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~0.00086~~ 0.0014	~~0.0020~~ 0.11
Benzo (a) anthracene (µg/l) 56553 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~0.038~~ 0.012	~~0.18~~ 0.013
Benzo (b) fluoranthene (µg/l) 205992 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~0.038~~ 0.012	~~0.18~~ 0.013
Benzo (k) fluoranthene (µg/l) 207089 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~0.038~~ 0.12	~~0.18~~ 0.13
Benzo (a) pyrene (µg/l) 50328 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					~~0.038~~ 0.0012	~~0.18~~ 0.0013
Bis2-Chloroethyl Ether (µg/l) 111444 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					0.30	~~5.3~~ 22
Bis (chloromethyl) Ether 542881 Known or suspected carcinogen; human health criteria at risk level 10^{-5}					0.0015	0.17
Bis2-Chloroisopropyl Ether (Bis (2-Chloro-1-methylethyl) Ether) (µg/l) 108601					~~1,400~~ 200	~~65,000~~ 4,000
Bis2-Ethylhexyl Phthalate (µg/l) 117817 Known or suspected carcinogen; human health criteria at risk level 10^{-5}. Synonym = Di-2-Ethylhexyl Phthalate.					~~12~~ 3.2	~~22~~ 3.7

Bromoform (µg/l) 75252 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~43~~ 70	~~1,400~~ 1,200
Butyl benzyl phthalate (µg/l) 85687					~~1,500~~ [~~0.10~~ 1.0]	~~1,900~~ [~~0.10~~ 1.0]
Cadmium (µg/l)[5] 7440439 Freshwater values are a function of total hardness as calcium carbonate ($CaCO_3$) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER ~~e~~ ~~{1.128[ln(hardness)] - 3.828}~~ e (0.9789[ln(hardness)]-3.866) (CF_a) Freshwater chronic criterion (µg/l) WER ~~[e {0.7852[ln(hardness)] - 3.490}]~~ ~~CF~~$_e$ e (0.7977[ln(hardness)]-3.909) (CF_c) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 1.136672-[(ln hardness)(0.041838)] CF_c = 1.101672-[(ln hardness)(0.041838)]	~~3.9~~ 1.8 $CaCO_3$ = 100	~~1.1~~ 0.72 $CaCO_3$ = 100	~~40~~ 33 X WER	~~8.8~~ 7.9 X WER	5	
Carbon tetrachloride (µg/l) 56235 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~2.3~~ 4.0	~~16~~ 50

Carbaryl (µg/l) 63252	2.1	2.1	1.6			
Chlordane (µg/l) 57749 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	2.4	0.0043	0.09	0.0040	~~0.0080~~ 0.0031	~~0.0081~~ 0.0032
Chloride (µg/l) 16887006 Human health criterion to maintain acceptable taste and aesthetic quality and applies at the drinking water intake. Chloride criteria do not apply in Class II transition zones (see subsection C of this section).	860,000	230,000			250,000	
Chlorine, Total Residual (µg/l) 7782505 In DGIF class i and ii trout waters (9VAC25-260-390 through 9VAC25-260-540) or waters with threatened or endangered species are subject to the halogen ban (9VAC25-260-110).	19 See 9VAC25-260-110	11 See 9VAC25-260-110				
Chlorine Produced Oxidant (µg/l) 7782505			13	7.5		
Chlorobenzene (µg/l) 108907					~~130~~ 100	~~1,600~~ 800
Chlorodibromomethane (µg/l) 124481 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~4.0~~ 8.0	~~130~~ 210
Chloroform (µg/l) 67663					~~340~~ 60	~~11,000~~ 2,000
2-Chloronaphthalene (µg/l) 91587					~~1,000~~ 800	~~1,600~~ 1,000
2-Chlorophenol (µg/l) 95578					~~81~~ 30	~~150~~ 800
Chlorpyrifos (µg/l) 2921882	0.083	0.041	0.011	0.0056		

Chromium III (µg/l)[5] 16065831 Freshwater values are a function of total hardness as calcium carbonate $CaCO_3$ mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion µg/l WER $[e^{\{0.8190[\ln(\text{hardness})]+3.7256\}}]$ (CF_a) Freshwater chronic criterion µg/l WER $[e^{\{0.8190[\ln(\text{hardness})]+0.6848\}}]$ (CF_c) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140.F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a= 0.316 CF_c=0.860	570 ($CaCO_3$ = 100)	74 ($CaCO_3$ = 100)			100 (total Cr)	
Chromium VI (µg/l)[5] 18540299	16	11	1,100	50		
Chrysene (µg/l) 218019 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.038~~ 1.2	~~0.018~~ 1.3

Copper (µg/l)[5] 7440508 Freshwater values are a function of total hardness as calcium carbonate $CaCO_3$ mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [$e^{\{0.9422[\ln(\text{hardness})]-1.700\}}$] ($CF_a$) Freshwater chronic criterion (µg/l) WER [$e^{\{0.8545[\ln(\text{hardness})]-1.702\}}$] ($CF_c$) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F. e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 0.960 CF_c = 0.960 Alternate copper criteria in freshwater: the freshwater criteria for copper can also be calculated using the EPA 2007 Biotic Ligand Model (See 9VAC25-260-140 G). Acute saltwater criterion is a 24-hour average not to be exceeded more than once every three years on the average.	13 $CaCO_3$ = 100	9.0 $CaCO_3$ = 100	9.3 X WER	6.0 X WER	1,300	
Cyanide, Free (µg/l) 57125	22	5.2	1.0	1.0	~~140~~ 4	~~16,000~~ 400

DDD (µg/l) 72548 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.0031~~ 0.0012	~~0.0031~~ 0.0012
DDE (µg/l) 72559 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.0022~~ 0.00018	~~0.0022~~ 0.00018
DDT (µg/l) 50293 Known or suspected carcinogen; human health criteria at risk level 10^{-5}. Total concentration of DDT and metabolites shall not exceed aquatic life criteria.	1.1	0.0010	0.13	0.0010	~~0.0022~~ 0.00030	~~0.0022~~ 0.00030
Demeton (µg/l) 8065483		0.1		0.1		
Diazinon (µg/l) 333415	0.17	0.17	0.82	0.82		
Dibenz (a, h) anthracene (µg/l) 53703 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.038~~ 0.0012	~~0.18~~ 0.0013
1,2-Dichlorobenzene (µg/l) 95501					~~420~~ 1,000	~~1,300~~ 3,000
1,3-Dichlorobenzene (µg/l) 541731					~~320~~ 7	~~960~~ 10
1,4 Dichlorobenzene (µg/l) 106467					~~63~~ 300	~~190~~ 900
3,3 Dichlorobenzidine (µg/l) 91941 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.21~~ 0.49	~~0.28~~ 1.5
Dichlorobromomethane (µg/l) 75274 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~5.5~~ 9.5	~~170~~ 270

1,2 Dichloroethane (µg/l) 107062 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~3.8~~ 99	~~370~~ 6,500
1,1 Dichloroethylene (µg/l) 75354					~~330~~ 300	~~7,100~~ 20,000
1,2-trans-dichloroethylene (µg/l) 156605					~~140~~ 100	~~10,000~~ 4,000
2,4 Dichlorophenol (µg/l) 120832					~~77~~ 10	~~290~~ 60
2,4 Dichlorophenoxy acetic acid (Chlorophenoxy Herbicide) (2,4-D) (µg/l) 94757					~~100~~ 1,300	12,000
1,2-Dichloropropane (µg/l) 78875 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~5.0~~ 9.0	~~150~~ 310
1,3-Dichloropropene (µg/l) 542756 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~3.4~~ 2.7	~~210~~ 120
Dieldrin (µg/l) 60571 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.24	0.056	0.71	0.0019	~~0.00052~~ 0.000012	~~0.00054~~ 0.000012
Diethyl Phthalate (µg/l) 84662					~~17,000~~ 600	~~44,000~~ 600
2,4 Dimethylphenol (µg/l) 105679					~~380~~ 100	~~850~~ 3,000
Dimethyl Phthalate (µg/l) 131113					~~270,000~~ 2,000	~~1,100,000~~ 2,000
Di-n-Butyl Phthalate (µg/l) 84742					~~2,000~~ 20	~~4,500~~ 30
2,4 Dinitrophenol (µg/l) 51285					~~69~~ 10	~~5,300~~ 300
Dinitrophenols (µg/l) 25550587					10	1,000
2-Methyl-4,6-Dinitrophenol (µg/l) 534521					~~13~~ 2	~~280~~ 30

2,4 Dinitrotoluene (µg/l) 121142 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~1.1~~ 0.49	~~34~~ 17
Dioxin 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin (µg/l) 1746016					5.0 E-8	5.1 E-8
1,2-Diphenylhydrazine (µg/l) 122667 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.36~~ 0.3	2.0
Dissolved Oxygen (µg/l) (See 9VAC25-260-50)						
Alpha-Endosulfan (µg/l) 959988 Total concentration alpha and beta-endosulfan shall not exceed aquatic life criteria.	0.22	0.056	0.034	0.0087	~~62~~ 20	~~89~~ 30
Beta-Endosulfan (µg/l) 33213659 Total concentration alpha and beta-endosulfan shall not exceed aquatic life criteria.	0.22	0.056	0.034	0.0087	~~62~~ 20	~~89~~ 40
Endosulfan Sulfate (µg/l) 1031078					~~62~~ 20	~~89~~ 40
Endrin (µg/l) 72208	0.086	0.036	0.037	0.0023	~~0.059~~ 0.03	~~0.060~~ 0.03
Endrin Aldehyde (µg/l) 7421934					~~0.29~~ 1	~~0.30~~ 1
Ethylbenzene (µg/l) 100414					~~530~~ 68	~~2,100~~ 130
Fecal Coliform (see 9VAC25-260-160)						
Fluoranthene (µg/l) 206440					~~130~~ 20	~~140~~ 20
Fluorene (µg/l) 86737					~~1,100~~ 50	~~5,300~~ 70

Foaming Agents (µg/l) Criterion measured as methylene blue active substances. Criterion to maintain acceptable taste, odor, or aesthetic quality of drinking water and applies at the drinking water intake.					500	
Guthion (µg/l) 86500		0.01		0.01		
Heptachlor (µg/l) 76448 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.52	0.0038	0.053	0.0036	~~0.00079~~ 0.000059	~~0.00079~~ 0.000059
Heptachlor Epoxide (µg/l) 1024573 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.52	0.0038	0.053	0.0036	~~0.00039~~ 0.00032	~~0.00039~~ 0.00032
Hexachlorobenzene (µg/l) 118741 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.0028~~ 0.00079	~~0.0029~~ 0.00079
Hexachlorobutadiene (µg/l) 87683 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~4.4~~ 0.1	~~180~~ 0.1
Hexachlorocyclohexane Alpha-BHC (µg/l) 319846 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.026~~ 0.0036	~~0.049~~ 0.0039
Hexachlorocyclohexane Beta-BHC (µg/l) 319857 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.091~~ 0.080	~~0.17~~ 0.14

Hexachlorocyclohexane (µg/l) (Lindane) Gamma-BHC 58899 ~~Known or suspected carcinogen; human health criteria at risk level 10^{-5}.~~	0.95		0.16		~~0.98~~ 4.2	~~1.8~~ 4.4
Hexachlorocyclohexane (HCH)-Technical (µg/l) 608731 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.066	0.1
Hexachlorocyclopentadiene (µg/l) 77474					~~40~~ 4	~~1,100~~ 4
Hexachloroethane (µg/l) 67721 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~14~~ 1	~~33~~ 1
Hydrogen sulfide (µg/l) 7783064		2.0		2.0		
Indeno (1,2,3,-cd) pyrene (µg/l) 193395 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.038~~ 0.012	~~0.18~~ 0.013
Iron (µg/l) 7439896 Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					300	
Isophorone (µg/l) 78591 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~350~~ 340	~~9,600~~ 18,000
Kepone (µg/l) 143500		zero		zero		

Lead (µg/l)[5] 7439921 Freshwater values are a function of total hardness as calcium carbonate $CaCO_3$ mg/l and the water effect ratio. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [e $^{\{1.273[\ln(\text{hardness})]-1.084\}}$]($CF_a$) Freshwater chronic criterion (µg/l) WER [e $^{\{1.273[\ln(\text{hardness})]-3.259\}}$] ($CF_c$) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 1.46203-[(ln hardness)(0.145712)] CF_c = 1.46203-[(ln hardness)(0.145712)]	94 $CaCO_3$ = 100	11 $CaCO_3$ = 100	230 X WER	8.8 X WER	15	
Malathion (µg/l) 121755		0.1		0.1		
Mercury (µg/l) 5 7439976	1.4	0.77	1.8	0.94		
Methyl Bromide (µg/l) 74839					~~47~~ 100	~~1,500~~ 10,000
3-Methyl-4-Chlorophenol 59507					500	2,000
Methyl Mercury (Fish Tissue Criterion mg/kg) 8 22967926					0.30	0.30

Methylene Chloride (µg/l) 75092 Known or suspected carcinogen; human health criteria at risk level 10^{-5}. Synonym = Dichloromethane					~~46~~ 20	~~5,900~~ 1,000
Methoxychlor (µg/l) 72435		0.03		0.03	~~100~~ 0.02	0.02
Mirex (µg/l) 2385855		zero		zero		
Nickel (µg/l)[5] 744002 Freshwater values are a function of total hardness as calcium carbonate $CaCO_3$ mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [$e^{\{0.8460[\ln(\text{hardness})] + 1.312\}}$] ($CF_a$) Freshwater chronic criterion (µg/l) WER [$e^{\{0.8460[\ln(\text{hardness})] - 0.8840\}}$] ($CF_c$) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 0.998 CF_c = 0.997	180 $CaCO_3$ = 100	20 $CaCO_3$ = 100	74 X WER	8.2 X WER	610	4,600
Nitrate as N (µg/l) 14797558					10,000	
Nitrobenzene (µg/l) 98953					~~17~~ 10	~~690~~ 600

N-Nitrosodimethylamine (µg/l) 62759 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.0069	30
N-Nitrosodiphenylamine (µg/l) 86306 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					33	60
N-Nitrosodi-n-propylamine (µg/l) 621647 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					0.050	5.1
Nonylphenol (µg/l) 84852153	28	6.6	7.0	1.7		
Parathion (µg/l) 56382	0.065	0.013				
PCB Total (µg/l) 1336363 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.		0.014		0.030	0.00064	0.00064
Pentachlorobenzene (µg/l) 608935					0.1	0.1
Pentachlorophenol (µg/l) 87865 Known or suspected carcinogen; human health criteria risk level at 10^{-5}. Freshwater acute criterion (µg/l) $e^{(1.005(pH)-4.869)}$ Freshwater chronic criterion (µg/l) $e^{(1.005(pH)-5.134)}$	8.7 pH = 7.0	6.7 pH = 7.0	13	7.9	~~2.7~~ 0.3	~~30~~ 0.4
pH See 9VAC25-260-50						
Phenol (µg/l) 108952					~~10,000~~ 4,000	~~860,000~~ 300,000
Phosphorus Elemental (µg/l) 7723140				0.10		

Pyrene (µg/l) 129000					~~830~~ 20	4,000 30
Radionuclides						
Gross Alpha Particle Activity (pCi/L)					15	
Beta Particle & Photon Activity (mrem/yr) (formerly man-made radionuclides)					4	
Combined Radium 226 and 228 (pCi/L)					5	
Uranium (µg/L)					30	
Selenium (µg/l)[5] 7782492 WER shall not be used for freshwater acute and chronic criteria. Freshwater criteria expressed as total recoverable.	20	5.0	290 X WER	71 X WER	170	4,200
Silver (µg/l)[5] 7440224 Freshwater values are a function of total hardness as calcium carbonate ($CaCO_3$) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [$e^{\{1.72[\ln(\text{hardness})]-6.52\}}$] ($CF_a$) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 0.85	3.4; $CaCO_3$ = 100		1.9 X WER			

Sulfate (µg/l) Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					250,000	
Temperature See 9VAC25-260-50						
1,2,4,5-Tetrachlorobenzene 95943					0.03	0.03
1,1,2,2-Tetrachloroethane (µg/l) 79345 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~1.7~~ 2.0	~~40~~ 30
Tetrachloroethylene (µg/l) 127184 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~6.9~~ 100	~~33~~ 290
Thallium (µg/l) 7440280					0.24	0.47
Toluene (µg/l) 108883					~~510~~ 57	6,000 520
Total Dissolved Solids (µg/l) Criterion to maintain acceptable taste, odor or aesthetic quality of drinking water and applies at the drinking water intake.					500,000	
Toxaphene (µg/l) 8001352 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.	0.73	0.0002	0.21	0.0002	~~0.0028~~ 0.0070	~~0.0028~~ 0.0071
Tributyltin (µg/l) 60105	0.46	0.072	0.42	0.0074		
1, 2, 4 Trichlorobenzene (µg/l) 120821 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~35~~ 0.71	~~70~~ 0.76

1,1,1-Trichloroethane 71556					10,000	200,000
1,1,2-Trichloroethane (µg/l) 79005 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~5.9~~ 5.5	~~160~~ 89
Trichloroethylene (µg/l) 79016 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~25~~ 6.0	~~300~~ 70
2, 4, 5 –Trichlorophenol 95954					300	600
2, 4, 6-Trichlorophenol (µg/l) 88062 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~14~~ 15	~~24~~ 28
2-(2, 4, 5-Trichlorophenoxy) propionic acid (Silvex) (µg/l) 93721					[~~50~~ 100]	[400]
Vinyl Chloride (µg/l) 75014 Known or suspected carcinogen; human health criteria at risk level 10^{-5}.					~~0.25~~ 0.22	~~24~~ 16

Zinc (µg/l)[5] 7440666 Freshwater values are a function of total hardness as calcium carbonate ($CaCO_3$) mg/l and the WER. The minimum hardness allowed for use in the equation below shall be 25 and the maximum, hardness shall be 400 even when the actual ambient hardness is less than 25 or greater than 400. Freshwater acute criterion (µg/l) WER [$e^{\{0.8473[\ln(\text{hardness})]+0.884\}}$]($CF_a$) Freshwater chronic criterion (µg/l) WER [$e^{\{0.8473[\ln(\text{hardness})]+0.884\}}$] ($CF_c$) WER = Water Effect Ratio = 1 unless determined otherwise under 9VAC25-260-140 F e = natural antilogarithm ln = natural logarithm CF = conversion factor a (acute) or c (chronic) CF_a = 0.978 CF_c = 0.986	120 $CaCO_3$ = 100	120 $CaCO_3$ = 100	90 X WER	81 X WER	7,400	26,000

[1]One hour average concentration not to be exceeded more than once every 3 years on the average, unless otherwise noted.

[2]Four-day average concentration not to be exceeded more than once every 3 years on the average, unless otherwise noted.

[3]Criteria have been calculated to protect human health from toxic effects through drinking water and fish consumption, unless otherwise noted and apply in segments designated as PWS in 9VAC25-260-390 through 9VAC25-260-540.

[4]Criteria have been calculated to protect human health from toxic effects through fish consumption, unless otherwise noted and apply in all other surface waters not designated as PWS in 9VAC25-260-390 through 9VAC25-260-540.

[5]Acute and chronic saltwater and freshwater aquatic life criteria apply to the biologically available form of the metal and apply as a function of the pollutant's water effect ratio (WER) as defined in 9VAC25-260-140 F (WER X criterion). Metals measured as dissolved shall be considered to be biologically available, or, because local receiving water characteristics may otherwise affect the biological availability of the metal, the biologically available equivalent measurement of the metal can be further defined by determining a water effect ratio (WER) and multiplying the numerical value shown in 9VAC25-260-140 B by the WER. Refer to 9VAC25-260-140 F. Values displayed above in the table are examples and correspond to a WER of 1.0. Metals criteria have been adjusted to convert the total recoverable fraction to dissolved fraction using a conversion factor. Criteria that change with hardness have the conversion factor listed in the table above.

[6]The flows listed below are default design flows for calculating steady state wasteload allocations unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of the water quality criteria.

Aquatic Life:	
Acute criteria	1Q10
Chronic criteria	7Q10
Chronic criteria (ammonia)	30Q10
Human Health:	
Noncarcinogens	30Q5
Carcinogens	Harmonic mean

The following are defined for this section:

"1Q10" means the lowest flow averaged over a period of 1 day which on a statistical basis can be expected to occur once every 10 climatic years.

"7Q10" means the lowest flow averaged over a period of 7 consecutive days that can be statistically expected to occur once every 10 climatic years.

"30Q5" means the lowest flow averaged over a period of 30 consecutive days that can be statistically expected to occur once every 5 climatic years.

"30Q10" means the lowest flow averaged over a period of 30 consecutive days that can be statistically expected to occur once every 10 climatic years.

"Averaged" means an arithmetic mean.

"Climatic year" means a year beginning on April 1 and ending on March 31.

[7]The criteria listed in this table are two significant digits. For other criteria that are referenced to other sections of this regulation in this table, all numbers listed as criteria values are significant.

[8]The fish tissue criterion for methylmercury applies to a concentration of 0.30 mg/kg as wet weight in edible tissue for species of fish and shellfish resident in a waterbody that are commonly eaten in the area and have commercial, recreational, or subsistence value.

C. Application of freshwater and saltwater numerical criteria. The numerical water quality criteria listed in subsection B of this section (excluding dissolved oxygen, pH, temperature) shall be applied according to the following classes of waters (see 9VAC25-260-50) and boundary designations:

CLASS OF WATERS	NUMERICAL CRITERIA
I and II (Estuarine Waters)	Saltwater criteria apply
II (Transition Zone)	More stringent of either the freshwater or saltwater criteria apply
II (Tidal Freshwater), III, IV, V, VI and VII	Freshwater criteria apply

The following describes the boundary designations for Class II, (estuarine, transition zone and tidal freshwater waters) by river basin:

1. Rappahannock Basin. Tidal freshwater is from the fall line of the Rappahannock River to the upstream boundary of the transition zone including all tidal tributaries that enter the tidal freshwater Rappahannock River.

Transition zone upstream boundary – N38° 4' 56.59"/W76° 58' 47.93" (430 feet east of Hutchinson Swamp) to N38° 5' 23.33"/W76° 58' 24.39" (0.7 miles upstream of Peedee Creek).

Transition zone downstream boundary – N37° 58' 45.80"/W76° 55' 28.75" (1,000 feet downstream of Jenkins Landing) to N37° 59' 20.07/W76° 53' 45.09" (0.33 miles upstream of Mulberry Point). All tidal waters that enter the transition zone are themselves transition zone waters.

Estuarine waters are from the downstream boundary of the transition zone to the mouth of the Rappahannock River (Buoy 6), including all tidal tributaries that enter the estuarine waters of the Rappahannock River.

2. York Basin. Tidal freshwater is from the fall line of the Mattaponi River at N37° 47' 20.03"/W77° 6' 15.16" (800 feet upstream of the Route 360 bridge in Aylett) to the upstream boundary of the Mattaponi River transition zone, and from the fall line of the Pamunkey River at N37° 41' 22.64"/W77° 12' 50.83" (2,000 feet upstream of Totopotomy Creek) to the upstream boundary of the Pamunkey River transition zone, including all tidal tributaries that enter the tidal freshwaters of the Mattaponi and Pamunkey Rivers.

Mattaponi River transition zone upstream boundary – N37° 39' 29.65"/W76° 52' 53.29" (1,000 feet upstream of Mitchell Hill Creek) to N37° 39' 24.20"/W76° 52' 55.87" (across from Courthouse Landing).

Mattaponi River transition zone downstream boundary – N37° 32' 19.76"/W76° 47' 29.41" (old Lord Delaware Bridge, west side) to N37° 32' 13.25"/W76° 47' 10.30" (old Lord Delaware Bridge, east side).

Pamunkey River transition zone upstream boundary – N37° 32' 36.63"/W76° 58' 29.88" (Cohoke Marsh, 0.9 miles upstream of Turkey Creek) to N37° 32' 36.51"/W76° 58' 36.48" (0.75 miles upstream of creek at Cook Landing).

Pamunkey River transition zone downstream boundary – N37° 31' 57.90"/W76° 48' 38.22" (old Eltham Bridge, west side) to N37° 32' 6.25"/W76° 48' 18.82" (old Eltham Bridge, east side).

All tidal tributaries that enter the transition zones of the Mattaponi and Pamunkey Rivers are themselves in the transition zone.

Estuarine waters are from the downstream boundary of the transition zones of the Mattaponi and Pamunkey Rivers to the mouth of the York River (Tue Marsh Light) including all tidal tributaries that enter the estuarine waters of the York River.

3. James Basin. Tidal freshwater is from the fall line of the James River in the City of Richmond upstream of Mayo Bridge to the upstream boundary of the transition zone, including all tidal tributaries that enter the tidal freshwater James River.

James River transition zone upstream boundary – N37° 14' 28.25"/W76° 56' 44.47" (at Tettington) to N37° 13' 38.56"/W76° 56' 47.13" (0.3 miles downstream of Sloop Point).

Chickahominy River transition zone upstream boundary – N37° 25' 44.79"/W77° 1' 41.76" (Holly Landing).

Transition zone downstream boundary – N37° 12' 7.23"/W76° 37' 34.70" (near Carters Grove Home, 1.25 miles downstream of Grove Creek) to N37° 9' 17.23"/W76° 40' 13.45" (0.7 miles upstream of Hunnicutt Creek). All tidal waters that enter the transition zone are themselves transition zone waters.

Estuarine waters are from the downstream transition zone boundary to the mouth of the James River (Buoy 25) including all tidal tributaries that enter the estuarine waters of the James River.

4. Potomac Basin. Tidal freshwater includes all tidal tributaries that enter the Potomac River from its fall line at the Chain Bridge (N38° 55' 46.28"/W77° 6' 59.23") to the upstream transition zone boundary near Quantico, Virginia.

Transition zone includes all tidal tributaries that enter the Potomac River from N38° 31' 27.05"/W77° 17' 7.06" (midway between Shipping Point and Quantico Pier) to N38° 23' 22.78"/W77° 1' 45.50" (one mile southeast of Mathias Point).

Estuarine waters includes all tidal tributaries that enter the Potomac River from the downstream transition zone boundary to the mouth of the Potomac River (Buoy 44B).

5. Chesapeake Bay, Atlantic Ocean, and small coastal basins. Estuarine waters include the Atlantic Ocean tidal

tributaries, and the Chesapeake Bay and its small coastal basins from the Virginia state line to the mouth of the bay (a line from Cape Henry drawn through Buoys 3 and 8 to Fishermans Island), and its tidal tributaries, excluding the Potomac tributaries and those tributaries listed in subdivisions 1 through 4 of this subsection.

6. Chowan River Basin. Tidal freshwater includes the Northwest River and its tidal tributaries from the Virginia-North Carolina state line to the free flowing portion, the Blackwater River and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters at approximately state route 611 at river mile 20.90, the Nottoway River and its tidal tributaries from the Virginia-North Carolina state line to the end of tidal waters at approximately Route 674, and the North Landing River and its tidal tributaries from the Virginia-North Carolina state line to the Great Bridge Lock.

Transition zone includes Back Bay and its tributaries in the City of Virginia Beach to the Virginia-North Carolina state line.

D. Site-specific modifications to numerical water quality criteria.

1. The board may consider site-specific modifications to numerical water quality criteria in subsection B of this section where the applicant or permittee demonstrates that the alternate numerical water quality criteria are sufficient to protect all designated uses (see 9VAC25-260-10) of that particular surface water segment or body.

2. Any demonstration for site-specific human health criteria shall be restricted to a reevaluation of the bioconcentration or bioaccumulation properties of the pollutant. The exceptions to this restriction are for site-specific criteria for taste, odor, and aesthetic compounds noted by double asterisks in subsection B of this section and nitrates.

3. Procedures for promulgation and review of site-specific modifications to numerical water quality criteria resulting from subdivisions 1 and 2 of this subsection.

a. Proposals describing the details of the site-specific study shall be submitted to the board's staff for approval prior to commencing the study.

b. Any site-specific modification shall be promulgated as a regulation in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). All site-specific modifications shall be listed in 9VAC25-260-310 (Special standards and requirements).

E. Variances to water quality standards.

1. A variance from numeric criteria may be granted to a discharger if it can be demonstrated that one or more of the conditions in 9VAC25-260-10 H limit the attainment of one or more specific designated uses.

a. Variances shall apply only to the discharger to whom they are granted and shall be reevaluated and either continued, modified or revoked at the time of permit issuance. At that time the permittee shall make a showing that the conditions for granting the variance still apply.

b. Variances shall be described in the public notice published for the permit. The decision to approve a variance shall be subject to the public participation requirements of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, 9VAC25-31 [~~(Permit Regulation)~~].

c. Variances shall not prevent the maintenance and protection of existing uses or exempt the discharger or regulated activity from compliance with other appropriate technology or water quality-based limits or best management practices.

d. Variances granted under this section shall not apply to new discharges.

e. Variances shall be submitted by the department's Division of Scientific Research or its successors to the U.S. Environmental Protection Agency for review and approval or disapproval.

f. A list of variances granted shall be maintained by the department's Division of Scientific Research or its successors.

2. None of the variances in this subsection shall apply to the halogen ban section (9VAC25-260-110) or temperature criteria in 9VAC25-260-50 if superseded by § 316(a) of the Clean Water Act requirements. No variances in this subsection shall apply to the criteria that are designed to protect human health from carcinogenic and noncarcinogenic toxic effects (subsection B of this section) with the exception of the metals, and the taste, odor, and aesthetic compounds noted by double asterisks and nitrates, listed in subsection B of this section.

F. Water effect ratio.

1. A water effects ratio (WER) shall be determined by measuring the effect of receiving water (as it is or will be affected by any discharges) on the bioavailability or toxicity of a metal by using standard test organisms and a metal to conduct toxicity tests simultaneously in receiving water and laboratory water. The ratio of toxicities of the [~~metal(s)~~ metals] in the two waters is the WER (toxicity in receiving water divided by toxicity in laboratory water equals WER). Once an acceptable WER for a metal is established, the numerical value for the metal in subsection B of this section is multiplied by the WER to produce an instream concentration that will protect designated uses.

This instream concentration shall be utilized in permitting decisions.

2. The WER shall be assigned a value of 1.0 unless the applicant or permittee demonstrates to the department's satisfaction in a permit proceeding that another value is appropriate, or unless available data allow the department to compute a WER for the receiving waters. The applicant or permittee is responsible for proposing and conducting the study to develop a WER. The study may require multiple testing over several seasons. The applicant or permittee shall obtain the department's Division of Scientific Research or its successor approval of the study protocol and the final WER.

3. [~~The Permit Regulation at~~] 9VAC25-31-230 C requires that permit limits for metals be expressed as total recoverable measurements. To that end, the study used to establish the WER may be based on total recoverable measurements of the metals.

4. The WER is established in a permit proceeding, shall be described in the public notice associated with the permit proceeding, and applies only to the applicant or permittee in that proceeding. The department's action to approve or disapprove a WER is a case decision, not an amendment to the present regulation.

The decision to approve or disapprove a WER shall be subject to the public participation requirements of [~~the Permit~~ Virginia Pollutant Discharge Elimination System (VPDES)] Regulation, Part IV (9VAC25-31-260 et seq.). A list of final WERs will be maintained by the department's Division of Scientific Research or its successor.

5. A WER shall not be used for the freshwater and saltwater chronic mercury criteria or the freshwater acute and chronic selenium criteria.

G. Biotic Ligand Model for copper. On a case-by-case basis, EPA's 2007 copper criteria (EPA-822-F-07-001) biotic ligand model (BLM) for copper may be used to determine alternate copper criteria for freshwater sites. The BLM is a bioavailability model that uses receiving water characteristics to develop site-specific criteria. Site-specific data for 10 parameters are needed to use the BLM. These parameters are temperature, pH, dissolved organic carbon, calcium, magnesium, sodium, potassium, sulfate, chloride, and alkalinity. If sufficient data for these parameters are available, the BLM can be used to calculate alternate criteria values for the copper criteria. The BLM would be used instead of the hardness-based criteria and takes the place of the hardness adjustment and the WER. A WER will not be applicable with the BLM.

EDITOR'S NOTE: The proposed amendments to 9VAC25-260-155, which were published in 34:2 VA.R. 193-237 September 18, 2017, were not adopted by the State Water Control Board. Since no changes were made to this section, the text is removed from the final regulation.

9VAC25-260-170. Bacteria; other recreational waters.

A. The following bacteria criteria [~~(colony forming units (CFU)/100 ml)~~ (counts/100ml)] shall apply to protect primary contact recreational uses in surface waters, except waters identified in subsection B of this section:

[In freshwater,] E. coli bacteria shall not exceed a [~~monthly~~] geometric mean of 126 [~~CFU/100 ml in freshwater~~ counts/100ml] and [~~no more~~ shall not have greater] than [a] 10% [excursion frequency] of [~~the samples in the assessment period shall exceed~~] a statistical threshold value (STV) of 410 [~~CFU/100 ml~~ counts/100 ml, both in an assessment period of up to 90 days].

[In transition and saltwater,] Enterococci bacteria shall not exceed a [~~monthly~~] geometric mean of 35 [~~CFU/100 ml in transition and saltwater~~ counts/100ml] and [~~no more~~ shall not have greater] than [a] 10% [excursion frequency] of [~~the samples in the assessment period shall exceed~~] a statistical threshold value (STV) of 130 [~~CFU/100 ml~~ counts/100ml, both in an assessment period of up to 90 days].

1. See 9VAC25-260-140 C for boundary delineations for freshwater, transition and saltwater.

[~~2.~~] ~~Geometric means shall be calculated using all data collected during any calendar month with a minimum of four weekly samples.~~ [~~The Virginia Department of Health shall make determinations regarding beach advisories or closures.~~]

~~3. If there are insufficient data to calculate monthly geometric means in freshwater, no more than 10% of the total samples in the assessment period shall exceed 235 E. coli CFU/100 ml.~~

~~4. If there are insufficient data to calculate monthly geometric means in transition and saltwater, no more than 10% of the total samples in the assessment period shall exceed enterococci 104 CFU/100 ml.~~

~~5. For beach advisories or closures, a single sample maximum of 235 E. coli CFU/100 ml in freshwater and a single sample maximum of 104 enterococci CFU/100 ml in saltwater and transition zones shall apply.~~

[2. In VPDES discharges to freshwater, bacteria in effluent requiring disinfection shall not exceed a monthly geometric mean of E. coli bacteria of 126 counts/100ml. Alternative performance standards may be established where an approved long term control plan establishes an

alternative level of disinfection for a combined sewer system.

In VPDES discharges to transition and saltwater, bacteria in effluent requiring disinfection shall not exceed a monthly geometric mean of enterococci bacteria of 35 counts/100ml.

B. The following bacteria criteria per 100 ml (CFU/100 ml) of water shall apply:

E. coli bacteria shall not exceed a monthly geometric mean of 630 CFU/100 ml in freshwater.

Enterococci bacteria shall not exceed a monthly geometric mean of 175 CFU/100 ml in transition and saltwater.

1. See 9VAC25-260-140 C for boundary delineations for freshwater, transition and saltwater.

2. Geometric means shall be calculated using all data collected during any calendar month with a minimum of four weekly samples.

3. If there is insufficient data to calculate monthly geometric means in freshwater, no more than 10% of the total samples in the assessment period shall exceed 1173 E. coli CFU/100 ml.

4. If there is insufficient data to calculate monthly geometric means in transition and saltwater, no more than 10% of the total samples in the assessment period shall exceed 519 enterococci CFU/100 ml.

5. Where the existing water quality for bacteria is below the geometric mean criteria in a water body designated for secondary contact in subdivision 6 of this subsection that higher water quality will be maintained in accordance with 9VAC25-260-30 A 2.

6. Surface waters designated under this subsection are as follows:

a. (Reserved)

b. (Reserved)

c. (Reserved)]

VA.R. Doc. No. R18-2148; Filed May 29, 2019, 8:01 a.m.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 17 of the Code of Virginia regarding the promulgation of technical regulations governing actual live horse racing at race meetings licensed by the commission.

Title of Regulation: **11VAC10-50. Racing Officials (amending 11VAC10-50-10, 11VAC10-50-70).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: July 8, 2019.

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email kimberly.mackey@vrc.virginia.gov.

Summary:

The amendments (i) eliminate the "every five year" fingerprint requirement, giving the commission discretion to require fingerprints based on the type of permit and responsibilities of the individual applying for a racing official permit and (ii) allow for the use of microchips and digital tattoos to identify horses entering the paddock.

Part I
General

11VAC10-50-10. Generally.

No racing official shall participate in any horse racing subject to the jurisdiction of the commission or in the conduct of a race meeting or pari-mutuel wagering of the race meeting unless the person possesses a permit from the commission and complies with the provisions of ~~the Act of the General Assembly creating Horse Racing and Pari Mutuel Betting~~ Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia and the regulations of the commission. Permits issued by the commission are not transferable.

A. Application for permit. A person desiring to obtain a permit as a racing official shall make an application for a permit on a form prescribed by the commission. The application shall be accompanied by a fee prescribed by the commission and shall include the cost of fingerprinting and a background investigation. The applicant shall be fingerprinted upon making his initial application in the Commonwealth ~~and at least once every five years thereafter~~. However, the commission, in its discretion, may require fingerprints from any applicant or holder of a permit at any time. The application shall be verified by the oath or affirmation of the applicant. In addition, the applicant shall demonstrate that he:

1. Is of good moral character and reputation;

2. Is experienced in horse racing;

3. Is familiar with the duties the applicant is applying to do and with the regulations of the commission;

4. Possesses the mental and physical capacity to perform the duties of the position; and

~~5.~~ An applicant whose vision is essential to the performance of his duties shall take and satisfactorily pass an optical examination every two years. The eye examination results

must show natural or corrected 20-20 vision and an ability to distinguish colors correctly.

B. Fee schedule. Before submitting an application for a permit as a racing official, the applicant shall consult the fee schedule of the Virginia Racing Commission to ascertain the applicable fee, make out a check or money order payable to the Virginia Racing Commission or pay in cash the full amount of the fee, and submit the fee with the application.

C. Consideration by commission. The commission shall promptly consider an application and shall issue or deny the permit based on information in the application and all other information before ~~it~~ the commission, including any investigation ~~it~~ the commission deems appropriate. If an application is approved, the commission shall issue a permit, and the permit shall be valid for one year.

D. Denial of application. The commission shall deny the application~~,~~ if it finds that the issuance of a permit to a person as a racing official would not be in the interests of the people of the Commonwealth, or the horse racing industry of the Commonwealth or would reflect adversely on the honesty and integrity of the horse racing industry in the Commonwealth. The commission shall also deny the application~~,~~ if it finds that the applicant:

1. Has knowingly made a false statement of a material fact in the application~~,~~ or has deliberately failed to disclose any information requested by the commission;

2. Is or has been guilty of any corrupt or fraudulent practice or conduct in connection with any horse race meeting in this or any other state;

3. Has knowingly failed to comply with the provisions of ~~the Act~~ Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia or the regulations of the commission;

4. Has had a permit to engage in activity related to horse racing denied for just cause, suspended, or revoked in any other jurisdiction, and such denial, suspension, or revocation is still in effect;

5. Is unqualified to perform the duties required for the permit sought; or

6. Has been convicted of a misdemeanor or felony involving unlawful conduct or wagering, fraudulent use of a credential, unlawful transmission of information, touting, bribery, administration or possession of drugs, or any felony considered by the commission to reflect adversely on the horse racing industry in the Commonwealth.

E. Denial is final. The denial of an application by a person as a racing official shall be final unless an appeal is made by the applicant under the provisions of ~~these~~ the regulations of the commission.

F. Prohibited activities for racing officials. No racing official or any assistant of a racing official~~,~~ while serving at any race meeting licensed by the commission~~,~~ shall engage in any of the following activities:

1. Participating in the sale, purchase, or ownership of any horse ~~which~~ that is racing at a meeting where the racing official is serving;

2. Being involved in any way in the purchase or sale of any contract on any jockey racing at the meeting;

3. Wagering at race meetings licensed by the commission;

4. Accepting any gratuity or payment, other than regular wages or salary, directly or indirectly; or

5. Engaging in any activity that would impair a racing official's judgment or to function in his assigned capacity.

G. Reporting violations. Every racing official~~,~~ and any assistant~~, is~~ are responsible to report immediately to the stewards every observed violation of ~~these~~ the regulations of the commission as well as all violations of state and federal laws during the race meeting.

H. Single appointment. No racing official may hold more than one official position~~,~~ unless at the request of the licensee or on its own motion the commission determines that~~,~~ the holding of more than one appointment would not subject the official to a conflict of his interests and duties in the two official positions.

I. Emergency appointment. Any racing official who desires to leave his position or is unable to fulfill his responsibilities must first obtain permission from the commission. The licensee shall promptly appoint a successor, subject to the issuance of the appropriate permit by the commission. In the event of an emergency and the licensee is unable to appoint a successor in time to permit the orderly conduct of racing, the stewards shall immediately appoint a temporary successor.

J. Notification of commission. The list of racing officials to be employed by the licensee shall be submitted to the commission no later than 30 days prior to the opening of the race meeting. The licensee shall be responsible for submitting an application for each racing official who has not been previously issued a permit by the commission no later than 60 days prior to the opening of the race meeting.

K. Fine, suspension, and revocation. A racing official may be fined, be suspended, or have his permit revoked at any time by the commission for incompetence, failure to follow or enforce the commission's regulations, or any conduct detrimental to horse racing. The disciplinary action of the commission shall be final unless the racing official appeals the action under the provisions of this chapter.

L. Attendance at proceedings. A racing official shall attend, when requested by the stewards or commission, any hearing, appeal, or proceeding where his testimony may be material in arriving at a determination of the matter.

M. Interference with other officials. A racing official shall not interfere with the deliberations or the decision-making of other racing officials.

11VAC10-50-70. Horse identifier.

The licensee shall appoint a qualified person to act as horse identifier for the race meeting. The horse identifier shall be responsible for the proper identification of all horses entered to race. Among the duties of the horse identifier are:

1. Accompanying the commission's or licensee's veterinarian upon request during the prerace examination of all horses entered to race so as to ascertain their identity;

2. Examining every horse entered to race in the paddock for sex, age, color, markings, lip-tattoo, digital tattoo, microchip, or freeze brand number and name for comparison with the information contained on the certificate of registration;

3. Using photographs, if they exist, as an aid in identifying horses entered to race~~,~~ during the prerace examination and in the paddock prior to racing;

4. Notifying both the stewards and paddock judge of any doubts he has concerning the identity of any horse entered to race; and

5. Assisting the racing secretary in the safekeeping of certificates of registration, eligibility certificates, and racing permits~~,~~ and the recording any information required to be entered on these documents.

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 (11VAC10-50)

~~Application for Participants (rev. 02/07).~~

Application for Participants (rev. 9/2018)

VA.R. Doc. No. R19-5992; Filed May 28, 2019, 11:55 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 23 of the Code of Virginia when promulgating regulations pertaining to the administration of medication or other substances foreign to the natural horse.

Title of Regulation: **11VAC10-80. Commission Veterinarian (amending 11VAC10-80-20, 11VAC10-80-40).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: July 8, 2019.

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email kimberly.mackey@vrc.virginia.gov.

Summary:

The amendments allow the commission veterinarian to administer furosemide and receive compensation for furosemide administration and endoscopic examinations.

11VAC10-80-20. Restrictions.

The commission veterinarian or his assistant veterinarians shall not be permitted to treat or prescribe for any horse within the enclosure or any horse that may be entered to race, except for furosemide administration as stipulated in 11VAC10-180-80. However, this shall not preclude the commission veterinarian or his assistant veterinarians from rendering care in an emergency situation. When emergency care is rendered, the veterinarian shall submit a written report to the commission.

11VAC10-80-40. Prohibitions.

No holder of a permit shall employ or pay compensation or any gratuity to any veterinarian, either directly or indirectly, with the exception of furosemide administration and endoscopic examinations, during the term of his employment with the commission.

VA.R. Doc. No. R19-5993; Filed May 28, 2019, 12:04 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 17 of the Code of Virginia regarding the promulgation of technical regulations governing actual live horse racing at race meetings licensed by the commission.

Title of Regulation: **11VAC10-140. Flat Racing (amending 11VAC10-140-210).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: July 8, 2019.

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email kimberly.mackey@vrc.virginia.gov.

Summary:

The amendment clarifies that a rider in a steeplechase race can be charged with interference for something that occurs while the horses are under the starters orders.

11VAC10-140-210. Interference.

During a race, or while under the starters orders for a steeplechase race, no jockey shall (i) strike, strike at, or touch another jockey or another jockey's horse or equipment, or (ii) jostle another horse to interfere with that jockey or horse.

VA.R. Doc. No. R19-5995; Filed May 28, 2019, 12:10 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 23 of the Code of Virginia when promulgating regulations pertaining to the administration of medication or other substances foreign to the natural horse.

Title of Regulation: **11VAC10-180. Medication (amending 11VAC10-180-10, 11VAC10-180-35, 11VAC10-180-70, 11VAC10-180-75, 11VAC10-180-90, 11VAC10-180-100, 11VAC10-180-110).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: July 8, 2019.

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email kimberly.mackey@vrc.virginia.gov.

Summary:

The amendments update the regulations to reflect advances in technology in order to protect the welfare of the horses competing.

11VAC10-180-10. Definitions.

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

"Bleeder" means a horse that has been diagnosed as suffering from exercise-induced pulmonary hemorrhage based on external or endoscopic examination by a commission veterinarian or a practicing veterinarian who is a permit holder in the Commonwealth of Virginia or any other jurisdiction.

"Bleeder list" means a tabulation of all bleeders to be maintained by the stewards.

"Commission" means the Virginia Racing Commission.

"Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VI of the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) or any substance included in the five classification schedules of the federal Uniform Controlled Substances Act (21 USC § 301 et seq.).

"Furosemide list" means a tabulation of horses permitted to use the medication of furosemide on race day by declaration to the stewards, in addition to horses on the bleeder list.

"Injectable substance" means a liquid or solid substance that may require the addition of a liquid via a needle and syringe to change ~~it~~ the substance from a solid into a liquid, contained in a vial that can be accessed and administered only via a needle and syringe.

"Licensed veterinarian" means a veterinarian who holds a valid license to practice veterinary medicine and surgery under the applicable laws of the jurisdiction in which such person's practice is principally conducted.

"Milkshaking" or "bicarbonate loading" means administering a bicarbonate or other alkalinizing substance to a horse that elevates the horse's total carbon dioxide level or pH level above those existing naturally in the untreated horse at normal physiological concentrations as determined by the commission, regardless of the means of administration.

"Permitted race day substances" means only substances approved by the commission that are (i) administered solely for the benefit and welfare of the horse, (ii) nonperformance altering, (iii) of no danger to ~~riders/drivers~~ riders or drivers, and (iv) unlikely to interfere with the detection of prohibited substances.

"Prescription substance" means any substance that is administered or dispensed or labeled for use by or on the order of a licensed veterinarian for the purpose of medical treatment of an animal patient when a bona fide doctor-patient relationship has been established.

"Primary laboratory" means a facility accredited by the Racing Medication and Testing Consortium and designated by the commission for the testing of test samples.

"Prohibited substance" means any drug, medication, or chemical foreign to the natural horse, whether natural or synthetic, or a metabolite or analog thereof, the use of which is not expressly permitted by the regulations of the commission.

"Race day" means the 24-hour period before post time for the race in which the horse is entered to start.

"Reference laboratory" means a facility accredited by the Racing Medication and Testing Consortium and designated by the commission for the testing of split samples.

"Ship-in meet" means a limited meet, generally one, two, or three consecutive days of racing, to which the preponderance of horses ship in to race, leave after racing, and do not remain for daily training.

"Substance" means any drug, medication, or chemical foreign to the natural horse or human being, whether natural or synthetic, or a metabolite or analog thereof.

"Test sample" means any sample of blood, urine, saliva, or tissue obtained from a horse or person for the purpose of laboratory testing for the presence of substances.

"Tubing" means the administration to a horse of any substance via a naso-gastric tube.

11VAC10-180-35. Prohibited practices.

A. No trainer shall allow a horse to appear in a race, qualifying race, or official timed workout~~,~~ when the horse contains in its system any prohibited substance, as determined by testing of blood, saliva, or urine, or any other reasonable means.

B. No person shall administer any prohibited substance to a horse on race day. Furosemide is the only substance specifically permitted for use in approved horses on race day.

C. No veterinarian or permit holder shall, without good cause, possess or administer any substance to a horse stabled within the enclosure or at any facility under the jurisdiction of the commission if the substance:

1. Has not been approved by the U.S. Food and Drug Administration (FDA) for any use (human or animal)~~,~~ or by the U.S. Department of Agriculture's Center for Veterinary Biologics;

2. Is on the U.S. Drug Enforcement Agency's Schedule I or Schedule II of controlled substances as prepared by the Attorney General of the United States pursuant to 21 USC §§ 811 and 812;

3. May endanger the health and welfare of the horse or endanger the safety of the rider or driver, or may adversely affect the integrity of racing; or

4. Does not have a recognized laboratory analytical method to detect and confirm its administration.

D. No person, except a veterinarian holding a valid veterinarian's permit or an assistant under ~~his~~ the veterinarian's immediate supervision, shall have in his possession within the enclosure of a horse racing facility any prescription substance for animal use unless:

1. The person actually possesses~~,~~ within the enclosure of the horse racing facility~~,~~ documentary evidence that a prescription has been issued to him for the substance by a licensed veterinarian;

2. The prescription substance is labeled with a dosage for the horse ~~or horses~~ to be treated with the prescription substance; and

3. The horse or horses named in the prescription are then under the care and supervision of the permit holder and are then stabled within the enclosure of the horse racing facility.

E. The possession or administration of equine growth hormone, venoms, erythropoietin (Epogen), darbepoietin, oxyglobin, Hemopure, or any analogous substance that increases oxygen-carrying capacity of the blood is prohibited. Furthermore, should the analysis of a test sample detect the presence of antibodies of erythropoietin or darbepoietin or any analogous substance in the horse's blood that indicates a history of use of these substances, the horse shall be prohibited from racing and placed on the veterinarian's list until the horse tests negative for the presence of such antibodies.

F. The use of androgenic and anabolic steroids is prohibited in racing horses as stipulated in 11VAC10-180-75.

G. The use of an ~~extracorporal~~ extracorporeal shockwave therapy device or radial pulse wave therapy device is prohibited on the racetrack premises and at any site that falls under the jurisdiction of the Virginia Racing Commission unless:

1. The therapy device is registered with the commission veterinarian;

2. The therapy device is used by a veterinarian who is a permit holder; and

3. Each use of the therapy device is reported to the commission veterinarian on the treatment report.

Notwithstanding the provisions ~~above~~ in this subsection, whether on or off the premises, a shockwave therapy device or radial pulse wave therapy device shall not be used on a racehorse fewer than 10 days before the horse is to race or train at racing speed. For the purposes of this calculation, the day of treatment shall be considered day one.

H. Tubing of horses prohibited. The tubing or dosing of any horse for any reason on race day is prohibited~~,~~ unless administered for medical emergency purposes by a licensed veterinarian in which case the horse shall be scratched. The practice of administration of any substance~~,~~ via a tube or other method~~,~~ into a horse's stomach on race day is considered a violation of this chapter.

1. Using or possessing the ingredients or the paraphernalia associated with forced feeding to a horse of any alkalinizing agent with or without a concentrated form of carbohydrate, or administering any substance by tubing or other method on race day shall be considered a violation of this chapter.

2. Under the provisions of this subsection, endoscopic examination by a licensed veterinarian shall not be considered a violation of this chapter.

I. Notwithstanding any other provision in this chapter, no substance of any kind may be administered to a horse within

four hours, or three hours for a ship-in meet, of the scheduled post time for the race in which the horse is entered. To ensure uniform supervision and conformity to this ~~regulation~~ this chapter, the trainer shall have each horse programmed to race stabled in its assigned stall within the enclosure of the horse race facility no fewer than five hours, or four hours for a ship-in meet, prior to post time for the respective race.

J. Intra-articular injections prohibited. Injecting any substance or inserting a needle into a joint space is prohibited within seven days prior to the horse's race.

K. Peri-neural injections prohibited. Injecting a local anesthetic or other chemical agent adjacent to a nerve is prohibited within three days prior to the horse's race.

L. Hyperbaric oxygen chamber prohibited. Subjecting a horse to therapy utilizing a hyperbaric oxygen chamber is prohibited within four days prior to the horse's race.

11VAC10-180-70. Phenylbutazone, flunixin, and other ~~NSAIDs~~ nonsteroidal anti-inflammatory drugs.

A. Generally. ~~By this regulation, the Virginia Racing Commission prohibits the~~ The use of multiple ~~NSAIDs~~ nonsteroidal anti-inflammatory drugs in a horse ~~on any given day (stacking)~~ within 96 hours prior to the horse's race is prohibited. Despite this prohibition ~~of stacking~~, this ~~regulation~~ chapter specifically permits the use of one of ~~either~~ the following: (i) phenylbutazone, (ii) flunixin, ~~or~~ (iii) ketoprofen, (iv) firocoxib, or (v) diclofenac in racehorses in the quantities provided for in this chapter.

B. Quantitative testing. Any horse to which phenylbutazone, flunixin, or ketoprofen has been administered shall be subject to testing at the direction of the commission veterinarian to determine the quantitative levels of phenylbutazone, flunixin, ~~and~~ ketoprofen, firocoxib, or diclofenac, or the presence of other substances that may be present.

C. Disciplinary actions. The stewards may take disciplinary actions for reports of quantitative testing by the primary testing laboratory for levels of (i) phenylbutazone quantified at levels above 2.0 micrograms per milliliter of serum or plasma, (ii) flunixin quantified at levels above 20 ng per milliliter of serum or plasma, ~~or~~ (iii) ketoprofen quantified at levels above 2.0 ng per milliliter of serum or plasma, (iv) firocoxib quantified at levels above 20 ng per milliliter in serum or plasma, and (v) diclofenac quantified at levels above 5.0 ng per milliliter in serum or plasma in horses following races, qualifying races, and official timed workouts for the stewards or commission veterinarian~~, and~~. The stewards may use the most recent revision of the Association of Racing Commissioners International (RCI) Uniform Classification Guidelines for Foreign Substances and the Multiple Violations Penalty System as a guide. The stewards, in their discretion, may impose other more stringent disciplinary actions against trainers or other permit holders who violate the provisions under which (i) phenylbutazone, (ii) flunixin, ~~or~~ (iii) ketoprofen, (iv) firocoxib, or (v) diclofenac is permitted by the commission.

11VAC10-180-75. Androgenic and anabolic steroids.

A. All androgenic and anabolic steroids, natural or synthetic, are prohibited in racing horses, except as provided in this section.

B. Residues of the major metabolite of stanozolol, nandrolone, boldenone, and testosterone at concentrations less than the thresholds indicated in this section are permitted in test samples collected from racing horses.

C. Concentrations of these substances identified in subsection B of this section shall not exceed the following threshold concentrations:

1. Stanozolol – 100 pg/ml in serum or plasma for all horses regardless of gender.

2. Boldenone – 100 pg/ml in serum or plasma for all horses regardless of gender.

3. Nandrolone.

a. 100 pg/ml in serum or plasma in geldings, fillies, and mares.

b. Male horses other than geldings will not be tested for nandrolone.

4. Testosterone.

a. 100 pg/ml in serum or plasma in geldings, fillies, and mares.

b. Male horses other than geldings will not be tested for testosterone.

D. The presence of more than one of the four substances identified in subsection B of this section at concentrations greater than the individual thresholds indicated in subsection C of this section or a combination of any two or more substances recognized as androgenic or anabolic is prohibited.

E. The gender of each horse must be so identified for test samples submitted to the laboratory.

F. Any horse administered an androgenic or anabolic steroid to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug in serum or plasma. After the concentration has fallen below the designated threshold, the horse is eligible to be removed from the list.

G. The stewards may take disciplinary actions for reports of quantitative testing by the primary testing laboratory indicating the presence of one or more androgenic or anabolic steroid at concentrations above the individual thresholds indicated in subsection C of this section and may use the most recent revision of the Association of Racing Commissioners

International (RCI) Uniform Classification Guidelines for Foreign Substances and the Multiple Violations Penalty System as a guide.

11VAC10-180-90. Bicarbonate testing.

A. Generally. ~~By this regulation, the Virginia Racing Commission prohibits the~~ The feeding or administration to a horse on race day of any bicarbonate-containing substance or other alkalinizing substance that effectively alters the serum or plasma pH or concentration of bicarbonates or carbon dioxide in the horse is prohibited.

B. Test values. A serum or plasma total carbon dioxide level exceeding 37.0 millimoles per liter constitutes a positive test.

C. Testing procedure. The stewards or commission veterinarian may, at their discretion and at any time, order the collection of test samples from any ~~horses~~ horse present within the enclosure for determination of serum or plasma pH or concentration of bicarbonate, carbon dioxide, or electrolytes. Preracing testing or post-race testing may be done at a time and manner directed by the commission veterinarian. Whether prerace or post-race, the sample shall consist of ~~at least two~~ blood ~~tubes~~ taken from the horse to determine the serum or plasma total carbon dioxide concentration. If the chief racing chemist finds that the total carbon dioxide levels in the ~~tubes~~ sample exceed the standard test values of 37.0 millimoles per liter, then he shall inform the ~~stewards~~ commission veterinarian of the positive test results.

D. Split samples prohibited. The procedures for split sample testing shall not apply to bicarbonate testing procedures.

~~E. Disciplinary actions. The stewards shall, absent mitigating circumstances specifically noted in their findings, impose the following disciplinary action for violation of this section:~~

~~1. First offense: $2,500 fine and 90-day suspension; loss of purse.~~

~~2. Second offense: $5,000 fine and 180-day suspension; loss of purse.~~

~~3. Third offense: Revocation of license.~~

~~The stewards also may refer the case to the commission for further disciplinary action.~~

11VAC10-180-100. Collection of samples.

A. Test barn. Test samples shall be collected in the test barn under the supervision of the commission veterinarian or his designee. The commission veterinarian may, at his discretion, permit test samples to be collected in the horse's stall or any other location ~~he~~ the commission veterinarian deems appropriate. Under these circumstances, the commission veterinarian shall maintain a written record of his decision.

B. Horses to be tested. The stewards or commission veterinarian may, at any time, order the taking of test samples from any horse stabled within the enclosure of the horse racing facility, prior to racing or after racing including qualifying races and official timed workouts for the stewards or commission veterinarian. However, the stewards shall designate at least one horse from each race for the collection of test samples.

C. Collection procedure.

1. The trainer or a permit holder designated by the trainer shall accompany the horse to the test barn and witness the collection and splitting of the samples. The trainer or permit holder designated by the trainer shall cooperate with the commission veterinarian and the commission's veterinary technicians in the performance of their duties. The trainer or permit holder designated by the trainer must remain with the horse until the horse is released from the test barn.

2. Horses~~,~~ from which samples are to be collected~~,~~ shall be escorted~~,~~ following the race~~,~~ directly to the test barn by the commission's veterinary technicians, and the horses shall remain in the test barn until released by the commission veterinarian, his designee, or the test barn supervisor.

3. Stable equipment, other than common necessities for washing and cooling out a horse, is prohibited in the test barn. A practicing veterinarian may attend a horse in the test barn only in the presence of the commission veterinarian or the commission's veterinary technicians.

4. During the collection of test samples, the owner or trainer, or an assistant designated by the owner or trainer, shall be present and witness the collection of the test sample, the splitting of the sample, and sealing of containers. In the case of a claimed horse, the owner or trainer, or an assistant designated by the owner or trainer in whose name the horse started, shall be present to witness the collection of the test samples.

5. The test and split samples collected from a horse shall have identification tags affixed. One portion of the tag, bearing a printed identification number, shall remain with the sealed test and split samples, and the other portion of the tag bearing the same printed identification numbers shall be detached in the presence of the witness. The commission veterinarian or his designee shall on the detached portion of the tags identify the horse from which the test and split samples were collected, the race and date, and other information deemed appropriate. The detached portion of the tag shall be witnessed by the trainer or a permit holder designated by the trainer~~,~~ and shall be retained by the commission veterinarian for safekeeping.

6. A horse's identity shall be confirmed by examining its lip-tattoo, ~~number~~ digital tattoo, microchip, or ~~for a Standardbred, its~~ freeze brand number. A horse that has not

been ~~lip-tattooed or a Standardbred that has not been freeze branded~~ properly identified using any of these methods shall be reported immediately to the stewards.

7. If, after a horse remains for a reasonable time in the test barn, a test sample of urine cannot be collected from the horse, the commission veterinarian may, at his discretion, collect a test sample of blood or permit the horse to be returned to its barn where a test sample may be collected under the supervision of the commission veterinarian or the commission's veterinary technicians.

11VAC10-180-110. Laboratory findings and reports.

A. Primary testing laboratory. The commission shall designate a primary testing laboratory for the analysis of test samples collected under the supervision of the commission veterinarian. The commission shall designate a chief racing chemist within the primary testing laboratory who shall have the authority to report his findings to the executive secretary of the commission, the stewards, and the commission veterinarian.

B. Reference laboratories. The commission shall designate one or more laboratories, other than the primary testing laboratory, as references laboratories. These laboratories will conduct confirmatory analysis of split samples. Any reference laboratory must be willing to accept split samples for confirmatory testing. Any reference laboratory shall send results to both the person requesting the testing and the commission.

C. Chief racing chemist's responsibilities. The chief racing chemist shall be responsible for (i) safeguarding and analyzing the test samples delivered to the primary testing laboratory~~. It shall be the chief racing chemist's responsibility to maintain~~, (ii) proper maintenance of equipment, (iii) adequate staffing, and (iv) acceptable procedures to thoroughly and accurately analyze test samples submitted to the primary testing laboratory.

D. Reporting procedures. The chief racing chemist shall submit to the commission veterinarian a written report as to each test sample analyzed, indicating by identification tag number whether the test sample was negative or there was a chemical identification. All confirmed positive identifications shall be submitted to the executive secretary, the stewards, and the commission veterinarian.

E. Chemical identifications. If the chief racing chemist determines that ~~there is present in the test sample~~ a substance ~~or metabolites of a substance~~ foreign to the natural horse, except those specifically permitted by the regulations of the commission, ~~he~~ is present in the test sample, the chief racing chemist shall submit a report of chemical identification to the executive secretary of the commission, the stewards, and the commission veterinarian. In a report of chemical identification, the chief racing chemist shall submit evidence acceptable in the scientific community and admissible in court in support of his determination.

F. Review of chemical identifications. Upon receipt of a report of a chemical identification from the chief racing chemist, the stewards shall conduct a review of the chemical identification, which shall include~~, but not be limited to,~~ the chief racing chemist and the commission veterinarian. During the review, the following procedures shall apply:

1. All references to the report of a chemical identification shall be only by the identification tag number of the sample collected from the horse;

2. The chief racing chemist shall submit his written report of the chemical identification and the evidence supporting his finding;

3. The commission veterinarian shall submit a written statement to the stewards including~~, but not limited to,~~ the class of the substance, the concentration level detected in the sample, if determined, and its probable effect on a racehorse;

4. The stewards may ask questions at any time and request further documentation as they deem necessary;

5. After receiving the appropriate information on the identified substance, the stewards shall determine whether the chemical identification constitutes a violation of the regulations of the commission and whether it should be deemed a positive test result. In doing so, the stewards shall consider, among other things, the concentration level reported, its likely effect on the horse, and whether environmental contamination may have contributed to the test result;

6. In the event of a positive test result, the stewards shall notify the trainer and the owner of the horse of the right to send the split sample collected from the horse to one of the reference laboratories~~,~~ designated by the commission~~,~~ for confirmatory testing;

7. If the trainer or the owner elects to send the split sample to a reference laboratory, the stewards shall take no disciplinary action against any permit holder until the results from the reference laboratory are received, and the findings shall be a part of the record of any subsequent hearing; ~~and~~

8. The chief racing chemist's report of a chemical identification, the commission veterinarian's written statement, the results of confirmatory testing, and any other documentation submitted to the stewards shall become part of the record of any subsequent proceedings; and

9. Should the split sample not be tested by the reference laboratory due to any reason out of the commission's control, then the stewards shall hear the case based on the results of the primary testing laboratory.

G. A horse from which a positive test sample was collected may be placed on the steward's list until the stewards have made a final determination in the matter. The horse shall not be immune from resulting disciplinary action by the stewards or the commission.

H. Frozen samples. Unconsumed portions of all test samples tested by the primary testing laboratory ~~will~~ shall be maintained in a frozen state until cleared by the chief racing chemist and permission for their disposal is obtained from the Senior Commonwealth Steward, the Equine Medical Director, or the Executive Secretary.

I. Split samples. The commission veterinarian or his designee shall determine a minimum test sample requirement for the primary testing laboratory. If the test sample collected is less than the minimum requirement, then the entire test sample shall be sent to the primary laboratory.

If the sample collected is greater than the minimum sample requirement but less than twice that amount, the portion of the test sample that is greater than the minimum test sample requirement shall be secured as the split sample.

If the test sample collected is greater than twice the minimum test sample requirement, a portion of the sample approximately equal to the test sample shipped to the primary testing laboratory shall be secured as the split sample.

J. Storage of split samples. Split samples shall be shipped to the testing laboratory with the primary samples. The testing laboratory shall maintain the split samples in a secure and frozen state and when requested by the commission, make the split samples available for further testing, in accordance with standard protocols for maintaining the chain of evidence. Split samples shall be so maintained at the testing laboratory until permission for their release and disposal is obtained from the Senior Commonwealth Steward, the Equine Medical Director, or the Executive Secretary.

K. Shipment of split samples. The trainer or owner of the horse having been notified of a positive test result may request that the split sample be shipped to one of the reference laboratories designated by the commission. The request must be made in writing and received by the commission not later than three business days after the trainer of the horse receives notification of the positive findings. The split sample shall be shipped to the requested reference laboratory by the testing laboratory. The owner, trainer, or designee shall travel to the storage facility of the testing laboratory to witness the removal, packaging, and shipping procedure unless he has waived this opportunity in writing. Failure of the trainer, owner, or designee to appear at the designated time and place, or otherwise attempting to interfere with the shipment of the split sample or payment of the costs, shall constitute a waiver of all rights to the testing of this split sample. The cost of shipment and additional testing shall be paid in a manner satisfactory to the commission by the permit holder requesting the testing of the split sample. Upon the expiration of this three-day period, the trainer or owner relinquishes his right to request a split sample.

VA.R. Doc. No. R19-5989; Filed May 28, 2019, 12:18 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from the Administrative Process Act pursuant to Item 291 B of the 2018 Appropriation Act.

Title of Regulation: **12VAC5-195. Virginia WIC Program (amending 12VAC5-195-20, 12VAC5-195-30, 12VAC5-195-70, 12VAC5-195-80, 12VAC5-195-90, 12VAC5-195-110, 12VAC5-195-140, 12VAC5-195-180, 12VAC5-195-200, 12VAC5-195-210, 12VAC5-195-230, 12VAC5-195-240, 12VAC5-195-280, 12VAC5-195-300, 12VAC5-195-310, 12VAC5-195-320, 12VAC5-195-340, 12VAC5-195-350, 12VAC5-195-370, 12VAC5-195-390, 12VAC5-195-410, 12VAC5-195-450, 12VAC5-195-520, 12VAC5-195-540, 12VAC5-195-550, 12VAC5-195-560, 12VAC5-195-570, 12VAC5-195-580, 12VAC5-195-590, 12VAC5-195-600, 12VAC5-195-640, 12VAC5-195-670, 12VAC5-195-680; repealing 12VAC5-195-400).**

Statutory Authority: § 32.1-12 of the Code of Virginia; 7 CFR Part 246.

Effective Date: July 24, 2019.

Agency Contact: Robin Buskey, Policy Analyst, Office of Family Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7253, or email robin.buskey@vdh.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 majority of amendments resulting from a periodic review of 12VAC5-195, Virginia WIC Program, update text because of the program's transition from paper food instruments to the electronic benefits transfer (EBT) cards. Other amendments update the regulation to reflect current WIC Program policies and guidelines, including that (i) lost food instruments, which are currently in the form of EBT cards, can be replaced more than once; (ii) the local agency has no involvement in the appeal process, which is completed at the state office; (iii) the records retention

requirement is reduced to three years; (iv) the minimum two-year requirement for submitting prices is removed; (v) new retailers will be reassessed within six months after authorization; (vi) the duration period for use of a single uniform retailer agreement is changed; (vii) mandatory training is no longer required once annually but instead on an as required basis; and (viii) the process for identifying and analyzing high-risk retailers is conformed to federal regulation. Finally, technical and stylistic amendments improve consistency and clarity of the regulation.

12VAC5-195-20. Purpose.

A. The Virginia ~~WIC~~ Women, Infants and Children (WIC) Program serves women who are breastfeeding, pregnant, or have just given birth; infants ~~less~~ younger than one year old; and children ~~less~~ younger than five years old. WIC participants must be Virginia residents and meet the financial and nutritional requirements.

B. The Virginia WIC Program provides special supplemental foods to eligible participants through a retailer delivery system (7 CFR 246.12). Food benefits are issued by local agencies to eligible participants using food instruments (7 CFR 246.10). Participants redeem their food instruments at any authorized retailer or entity. The state agency enters into an agreement with authorized retailers (7 CFR 246.12). This agreement identifies the obligations, rights, and responsibilities of both the authorized retailers and the state agency. ~~Retailers deposit these food instruments into their bank account.~~ The state agency pays authorized retailers a reasonable dollar amount for the foods purchased, as listed on the ~~deposited~~ approved food ~~instruments~~ list (7 CFR 246.12).

C. The state agency shall promulgate policies, guidelines, manuals, and training resources to facilitate operations of the Virginia WIC Program in accordance with its contractual agreement with Food Nutrition Service (FNS) (7 CFR 246.3); the guidelines and instructions issued by FNS in policy letters; and management evaluations ~~and~~, audits, and the WIC Program State Plan of Operations.

12VAC5-195-30. Definitions.

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

"Administrative review" means the procedure through which applicants ~~and/or~~ or retailers may appeal a state agency's administrative action, including program disqualification, denied authorization and other adverse actions.

"Agency representative" means staff from the state agency, a local agency, a contractor, or other designated individuals trained to conduct WIC functions and monitor retailers.

"Approved food list" or "WIC Approved Food List, April 1, 2018, Virginia Department of Health" means a brochure or method used by the WIC Program to communicate to eligible participants, retailers, local agencies, and other interested parties which authorized supplemental foods may be purchased using WIC food instruments. The approved food list is a guide and must be used with the ~~printed~~ food instrument, which may identify specific brands or additional products not stated on the approved food list that may be purchased by participants.

"Authorization" means the process by which the state agency assesses, selects and enters into an agreement with retailers that apply or subsequently reapply to be authorized.

"CAPP Manual" or "CAPP Manual, Volume No. 1 – Policies & Procedures, Section No. 20500 – Accounts Receivable, Cardinal, August 2018, Office of the Comptroller, Commonwealth of Virginia" means the Commonwealth's Accounting Policies and Procedures (CAPP) Manual, which provides guidelines, policies, procedures, and regulations to assist and govern state agencies to develop procedures to properly account for, report, manage, and collect receivables.

"Caretaker" means a person 18 years of age or older, unless approved at the discretion of a competent professional authority, designated by a parent or legal guardian to certify an ~~infant/child~~ infant or child, obtain and redeem food instruments and attend nutrition education. A caretaker may be any person who has detailed knowledge of the nutritional needs and eating habits of the ~~infant/child~~ infant or child. A parent or legal guardian may designate one caretaker per family ID number.

"Cash value food benefits" means a special food instrument that has been issued to eligible participants for a specific dollar amount that must be used to purchase fruits and vegetables. Unless stated otherwise, all references to food instruments include cash value food benefits, as well as food and formula food instruments.

"Civil monetary penalty" or "CMP" means an administrative fine offered to a retailer in lieu of disqualification if inadequate participant access exists as determined by the state agency.

"Direct deposit ACH" means a method used to reimburse retailers for certain types of processed food instruments (i.e., "Over FI Max"). A credit is made to the retailer's designated bank account and routing number using the automated clearinghouse (ACH) process.

"Enrollment" means the process all applicants and authorized retailers must complete in order for a retailer to be eligible to accept WIC food instruments.

"FNS" means the U.S. Department of Agriculture Food and Nutrition Services.

"Food instrument" means a voucher, check, electronic benefits transfer card (EBT), coupon, or other document that is used by a participant to obtain supplemental foods.

"Formula flyer" or "Virginia WIC Program, Infant Formula Flyer, February 2018, Virginia Department of Health" means a handout or method used by the state agency to communicate to eligible participants, retailers, local agencies, and other interested parties that formulas may be purchased at authorized retailers.

~~"Image replacement document" or "IRD" means a legal copy of a deposited food instrument that is created and transmitted by a retailer's depository bank to the WIC Program's backend processor for payment consideration.~~

"Informal settlement meeting" means a meeting held with an authorized retailer or applicant representative and the state WIC director whose purpose is to review and clarify outstanding WIC Program administrative issues.

"Legal guardian" means an individual who has been appointed by a court of law or the Department of Social Services, or by other legal means, to have primary, physical custody of a minor. A legal guardian shall be authorized to provide eligibility information for an applicant, consent to medical treatment of the applicant, and shall be held legally bound if sanctions are imposed.

"NTE" means not to exceed.

"Peer group" means a classification of applicants and authorized retailers into groups based on common characteristics or criteria that affect food prices for the purpose of applying appropriate competitive price criteria to retailers at authorization and limiting payments for foods at competitive pricing levels. A retailer's peer group is used to determine competitive pricing levels at initial authorization and establish the reimbursement maximums paid by the state agency.

~~"Post-payment~~ "Post-payment review" means an analysis of paid food instruments redeemed by authorized retailers in order to determine if pricing and redemption discrepancies exist. Based upon this analysis, a retailer claim against the retailer may be established by the state agency.

~~"Prepayment edit" means a price adjustment made to the reimbursement level given to retailers. This editing process can be either automated or a manual screening of deposited food instruments done by an independent banking contractor, prior to releasing payment to authorized retailers.~~

"Relatives" means spouses, parents, children, brothers, sisters, aunts, uncles, nephews, nieces, grandparents, and grandchildren.

"Retailer" means a vendor, retail store, commissary, or entity authorized by the Virginia WIC Program to accept WIC food instruments for the various types of foods listed on the approved food ~~instruments~~ list. The term "retailer" is equivalent to the term "vendor" used in federal regulations (7 CFR 246.12).

"Retailer agreement" or "Virginia WIC Program's Retailer Agreement, January 2019, Virginia Department of Health" means a written agreement that establishes the respective roles and responsibilities of the state agency and authorized retailers in complying with federal and state requirements.

"Retailer claim" means the state agency has determined an authorized retailer committed a violation of the retailer agreement that affects the payment status of one or several food instruments.

"Retailer manual" or "Retailer Manual for the Virginia WIC Program, April 1, 2018, Virginia Department of Health" means a series of written documents that communicate administrative procedures for the Virginia WIC Program that regulate both authorized retailers and applicants. The ~~Retailer Manual~~ retailer manual is part of the WIC Program State Plan that must be submitted and approved by USDA.

"Sanctions" ~~mean a penalty~~ or "Virginia WIC Program – Sanction Violation Schedule, May 1, 2017, Virginia Department of Health" means the schedule of penalties imposed by the state agency upon an authorized retailer for a specific violation outlined in the retailer manual or retailer agreement.

"State agency" means the Virginia Department of Health and the delegated authority to the Division of Community Nutrition, which has the administrative responsibility for managing the Virginia WIC Program.

"Termination" means the act of ending a retailer's WIC Program authorization for administrative reasons that include a change of ownership, closed retailer location, voluntary withdrawal, and noncompetitive prices.

"UPC" means Universal Product Code.

"USDA memo" or "USDA Memo – SFP 09-020 Clarification on Use of the WIC Acronym and Logo, January 9, 2009, United States Department of Agriculture, Food and Nutrition Service" means a memo drafted by the federal government to provide guidance to states on the use of the WIC program's acronym and logo.

"Unique participant" means the number of unduplicated individuals who have redeemed one or more food instruments at a retail store during a specific period.

~~"United States~~ "U.S. Department of Agriculture" or "USDA" means the federal agency that provides funding for the WIC Program on behalf of Congress.

"Waiting list" means a list implemented by the state agency for individual participants when the maximum caseload is reached.

"WIC sales" means annual sales based on WIC redemption paid by the state agency to an authorized retailer.

Part II
Participant Requirements

12VAC5-195-70. Eligibility requirements.

A. Adjunctive financial eligibility requirements. Adjunctive~~,~~ or automatic financial eligibility is determined pursuant to 7 CFR 246.7. Documentation is required as proof of participation in programs that qualify an applicant for adjunctive financial eligibility. The state agency also allows Family Access to Medical Insurance Security Plan (FAMIS) and a $2.00 co-pay level to be used in determining adjunctive financial eligibility.

B. Local agencies shall serve institutionalized applicants if they meet all eligibility requirements.

C. For determining income eligibility, local agency personnel shall use the applicant's current or annualized income, whichever is the best indication of circumstances.

D. In determining income eligibility, the state agency shall utilize all income exclusions listed in 7 CFR 246.7.

E. Applicants who are not adjunctively financially eligible shall have financial eligibility determined using income guidelines equaling the income guidelines established under § 9 of the National School Lunch Act for reduced price school meals per 7 CFR 246.7.

F. An applicant claiming multiple fetuses shall have the stated number used at the time of certification, but shall be required to provide written verification by a physician or nurse practitioner working under the supervision of a physician within ~~90~~ 60 days of certification.

12VAC5-195-80. Proof of identification.

Applicants shall present proof of identification to obtain all WIC services and benefits. This includes ~~but is not limited to~~ certification and subsequent certification visits, food instrument issuance, special formula issuance, nutrition education, and ~~VOC~~ verification of certification transfers. The local agency shall only accept the following as proof of identification:

1. Valid Medicaid ~~card/letter~~ card or letter;

2. Social Security card;

3. Driver's license;

4. Birth certificate;

5. Marriage license;

6. Crib card for newborns;

7. Hospital card for newborns;

8. Military identification card or discharge papers (DD214);

9. ~~Clinic/hospital~~ Clinic or hospital record or ID;

10. ~~TANF/welfare~~ TANF or welfare photo ID;

11. Refugee settlement papers;

12. Immigration or Naturalization Record (e.g., green card);

13. ~~Passport/visa;~~ Passport or visa; and

14. School records (ID or report card, enrollment or health record)~~; and~~

~~15. WIC ID folder for infants of WIC participants at initial certification only~~.

12VAC5-195-90. Proof of residency.

A. Applicants shall present proof of residency at initial certification and subsequent certification visits. Proof of residency shall be current and include the applicant's name. The local agency shall accept the following as proof of residency:

1. Utility bills;

2. Other business mail with a Virginia address;

3. Deed, mortgage, monthly mortgage statement, or residential ~~rental/lease~~ rental or lease agreement;

4. Valid Virginia ~~drivers~~ driver's license;

5. Valid Medicaid Card or positive, official Medicaid Verification; or

6. ~~TANF/Welfare Photo~~ TANF or welfare photo ID.

B. Proof of residency for military personnel shall be current and include the applicant's name. The local agency shall accept the following as proof of residency for military personnel:

1. A letter from the company commander on official letterhead;

2. ~~Copy~~ A copy of official Department of Defense orders with Virginia installation assignment; or

3. ~~Leave~~ A leave and earning statement (LES) listing Virginia as the service member's home of record.

12VAC5-195-110. Caretaker.

A. A parent or legal guardian may have the privilege, but not the right, to designate one caretaker per family ID number to certify an infant or child who may obtain and redeem food instruments and attend nutrition education. The caretaker assumes all of the rights and responsibilities of the parent or legal guardian who designates him. A caretaker shall be designated only when the local agency cannot accommodate the needs of the parent to attend the local agency to obtain WIC benefits. In the absence of a parent or legal guardian, a ~~caregiver~~ caretaker shall provide reasonable documentation of his status as a primary ~~caregiver~~ caretaker. Reasons supporting the designation of a caretaker shall be documented

and become part of the participant's record. The authority to implement the caretaker policy will be granted individually to local agencies by the state WIC director. The parent is always encouraged to be the primary recipient of all WIC benefits.

B. A caretaker may be designated in two situations:

1. A parent or legal guardian's declaration of hardship; or

2. The caretaker providing reasonable documentation of his role in the absence of a parent or legal guardian.

C. Local agency personnel shall discuss the option of designating a caretaker if the participant, parent, or legal guardian declares hardship that prevents him from coming to the local agency during established regular and alternative hours due to:

1. Conflict of schedules due to work, school, or some other valid reason;

2. Lack of transportation; ~~or~~

3. An infant or child residing with a family member or caretaker; or

4. The parent or legal guardian being sanctioned from the program.

D. The caretaker shall provide reasonable documentation to substantiate his relationship with the infant or child and his role as primary caretaker. Reasonable documentation may include:

1. Signed caretaker designation form, WIC-311, indicating the designation of caretaker that may be obtained prior to the first local agency visit;

2. Signed and witnessed letter from the legal guardian or parent designating a caretaker and reason for the legal guardian's or parent's inability to certify an infant or child, obtain and redeem food instruments, and attend nutrition education~~.~~; or

3. Documentation of the parent or legal guardian's enrollment, residence, or confinement in a hospital treatment program, shelter, penal institution, or other institution.

12VAC5-195-140. Food instruments.

A. Food instrument issuance**.** All food instruments shall be issued through the automated system only after eligibility has been documented and when the participant, parent or legal guardian, caretaker, or proxy is physically present at the local agency to ~~pick up the food instrument~~ have their food benefits loaded, except when there is a system outage or system failure. Failure by the participant, parent, legal guardian, caretaker, or proxy to attend the initial nutrition education appointment may result in reduced WIC benefits for that month.

B. Lost food instruments. ~~Replacement of lost, valid, not redeemed food instruments shall only occur once within the entire duration of the participant, parent, caretaker, or legal guardian's receipt of WIC services, unless approval is obtained from the state agency.~~ Lost food instruments shall only be replaced for one of the following situations:

1. A participant leaving home because of domestic violence;

2. A change in full legal custody, including when ~~infants/children~~ infants or children are removed from home and placed in foster care or parental custody is changed; or

3. An event out of the control of participant, such as a fire or natural disaster that is publicly documented.

C. Stolen food instruments. Food instruments reported as stolen shall only be replaced when a police report is provided that states that the valid, not redeemed, WIC food instruments were stolen. Stolen food instruments shall not be replaced without a police report, unless costs are associated with the police report and a waiver is granted by the state agency. ~~Stolen food instruments shall only be replaced once within the entire duration of the participant, parent, caretaker, or legal guardian's receipt of WIC services, unless approval is obtained from the state agency.~~

~~D. Mailing WIC food instruments. Food instruments shall only be mailed with prior approval from the competent professional authority for individual participants if the participant has already received the required secondary nutrition education contact or if the participant will be able to receive nutrition education at the next visit within the certification period. Justification for mailing food instruments to individuals, families and groups includes:~~

~~1. Illness or disability resulting in the participant being physically unable to be present as documented by medical records;~~

~~2. Imminent childbirth as documented by medical records;~~

~~3. Distance to travel, especially in rural areas with a minimum 60 mile roundtrip travel distance between home and the local WIC clinic, as confirmed by the local WIC coordinator;~~

~~4. Other travel distance for participants with unique transportation challenges;~~

~~5. Computer failure at the local agency site;~~

~~6. Natural disasters;~~

~~7. Complete systemwide failure of automated system; and~~

~~8. Difficulty obtaining complete prescription for a special formula that has been approved by a local WIC coordinator.~~

~~Food instruments shall only be mailed for a three-month period. Requests beyond the three-month period shall require approval by the state agency.~~

12VAC5-195-180. Fair hearing.

A. The Virginia WIC Program is a federally administered program. The following fair hearing procedures are a federal process with which the state agency must comply. Pursuant to 7 CFR 246.9, the state agency shall provide a hearing procedure through which any individual may appeal a state or local agency action that results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the program.

B. The local agency shall inform each individual in writing of the right to a fair hearing at the time of a claim against an individual for improperly issued benefits or at the time of participation denial or of disqualification from the program.

C. A fair hearing shall be requested within 60 days of the written notification date of program denial, termination of benefits, or claim against an individual for improperly issued benefits. The request shall be made in any clear expression to present the case to a higher authority.

D. Participants who appeal the termination of benefits within 15 days must continue to receive WIC benefits until the hearing officer reaches a decision, the participant becomes categorically ineligible, or the certification period expires, whichever comes first.

E. Applicants who are denied WIC benefits at the initial certification or because of the expiration of their certification may appeal the denial but shall not receive benefits while awaiting the hearing decision.

~~F. The local agency shall:~~

~~1. Accept a fair hearing request verbally or in writing;~~

~~2. Contact the applicant or participant to schedule a preliminary conference within 10 calendar days of the fair hearing request; and~~

~~3. Inform the applicant or participant that a fair hearing will be conducted if the issue is not resolved at a preliminary conference.~~

~~If the issue is resolved at the conference, the applicant or participant shall sign a statement indicating that a formal fair hearing is no longer requested. If the issue is not resolved at the conference, the local agency shall contact the state agency to schedule a fair hearing.~~

~~G.~~ F. A fair hearing will be held within 21 days of the request, unless delayed ~~pursuant to subsection I or J, or~~ by mutual agreement of the parties.

~~H.~~ G. The state agency shall provide 10 days advanced written notice of the date, time, and place of the hearing, which shall be held in the local agency at which the participant or applicant receives WIC Program services.

~~I. The participant or applicant must appear at the fair hearing in person, but may be accompanied by a representative such as a relative, friend, legal counsel, or other spokesperson. The applicant or participant must indicate whether or not they will be represented by an attorney when the fair hearing request is made. The applicant or participant must also provide the state agency with copies of any written information to be used during the hearing and names of witnesses that will be called at least five days prior to the scheduled fair hearing. Failure to notify the state agency of these items may result in a rescheduled date and time for the fair hearing or the exclusion of documents and witnesses from the fair hearing.~~

~~J. The participant or applicant will have one opportunity to reschedule the fair hearing's date or time. All requests to reschedule the meeting date or time must be submitted in writing at least 24 hours before the scheduled meeting date unless an emergency occurs, as determined at the discretion of the state WIC director or designee.~~

~~K. If the participant or applicant is more than 45 minutes late from the agreed upon hearing start time, then this will be considered a "no show" unless they can provide documentation the state WIC director determines justifies the participant's or applicant's tardiness or failure to appear. This outcome means that the participant or applicant has forfeited his rights to a fair hearing.~~

~~L.~~ H. Pursuant to 7 CFR 246.9, the state or local agency shall provide the participant, applicant, or representative an opportunity to:

1. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal, which will be sent to the applicant or participant 10 days prior to the fair hearing;

2. Be assisted or represented by an attorney or other persons;

3. Bring witnesses;

4. Advance arguments without undue interference;

5. Question or refute any testimony or evidence, including an opportunity to confront and cross examine adverse witnesses; and

6. Submit evidence to establish all pertinent facts and circumstances in the case.

~~M.~~ I. The hearing officer shall hear evidence and testimony and reach a decision. The state WIC director shall provide written notification of the hearing officer's decision to the applicant or participant and the district health director within 45 days of the date of the fair hearing request. Participants whose benefits were previously denied or discontinued may

receive or reapply for WIC benefits upon receipt of a favorable decision by the hearing officer.

~~1. Applicants denied benefits may be enrolled upon receipt of a favorable decision.~~

~~2. Participants whose benefits were previously denied or discontinued may receive or reapply for WIC benefits upon receipt of a favorable decision by the hearing officer.~~

~~N.~~ J. The local agency and state agency shall keep the results of the hearing on file for ~~five~~ three years.

12VAC5-195-200. Program abuse and sanctions.

A. The state agency determines program abuse and sanctions that may be issued to applicants and participants. When more than one abuse is involved at a time, the sanction shall be based on the more serious abuse.

B. If an abuse occurs more than 12 months after the last abuse, the local agency shall process the abuse as a first offense.

C. When more than three abuses in a 12-month period occur, the local agency shall issue a three-month temporary disqualification.

D. Program abuses and assigned sanctions are as follows:

Abuse	Number of Offenses	Sanction
Class I		
Any deliberate misrepresentation of income, name, residence, family size, medical data, or date of birth to obtain WIC benefits	All	Three-month disqualification
Dual participation – redeeming food instruments from two ~~programs/agencies~~ programs or agencies in same month	All	One-year disqualification
Assessed claim for $100 or more	All	One-year disqualification
Assessed second or subsequent claim for any amount	2nd or subsequent	One-year disqualification
Attempting to steal or actually stealing food instruments from the local agency or another participant~~, if under $100~~	All	Three-month disqualification
Selling, exchanging or giving away food instruments, food, or formula	All	Three-month disqualification
Redeeming WIC food instruments reported as lost or stolen~~, if under $100~~	All	Three-month disqualification
Attempting to redeem or redeeming WIC food instruments for nonfood items (i.e., diapers, wine, cigarettes)	All	Three-month disqualification
Physically abusing the WIC or retailer staff (An incidence of physical abuse of WIC or retailer ~~staff/property~~ staff or properties should be reported to the police)	All	Three-month disqualification
Accepting cash or credit from a retailer in connection with a WIC transaction	1st	One-month disqualification
	2nd	Two-month disqualification
	3rd	Three-month disqualification
~~Alteration of WIC food instruments (includes date, quantities, types of food)~~	~~1st~~	~~One-month disqualification~~
	~~2nd~~	~~Two-month disqualification~~
	~~3rd~~	~~Three-month disqualification~~
Class II		
Creating a public nuisance at the local agency or the retailer (i.e., verbally abusing,	1st	Warning letter
	2nd	Two-month disqualification
	3rd	Three-month disqualification

harassing, or threatening WIC or retailer staff, destroying retailer merchandise, or disrupting normal local agency or retailer activities)		
Attempting to redeem or redeeming WIC food instruments for unauthorized food, formula, or food amounts	1st	Warning letter
	2nd	Two-month disqualification
	3rd	Three-month disqualification
Allowing unauthorized ~~person(s)~~ persons to use the WIC ID Folder to pick-up ~~and/or~~ or redeem WIC food instruments	1st	Warning letter
	2nd	Two-month disqualification
	3rd	Three-month disqualification
~~Deliberately damaging or destroying WIC food instruments~~	~~1st~~	~~Warning letter~~
	~~2nd~~	~~Two-month disqualification~~
	~~3rd~~	~~Three-month disqualification~~
Redeeming WIC food instruments before or after valid spend dates	1st	Warning letter
	2nd	One-month disqualification
	3rd	Two-month disqualification
Attempting to redeem or redeeming food instruments at unauthorized retailers	1st	Warning letter
	2nd	One-month disqualification
	3rd	Two-month disqualification

12VAC5-195-210. Collection of improperly issued ~~instruments/claims~~ instruments or claims against participants.

The state agency shall establish a claim against a participant for the full value of benefits improperly obtained or disposed of as a result of a participant violation. Participant violations include:

1. Inaccurate certification information;

2. Dual participation violations;

3. Violation of the WIC guidelines or rules by the proxy or caretaker; or

4. ~~Retention~~ Redemption of future food instruments after disqualification.

12VAC5-195-230. Conflict of interest.

A. ~~Individuals involved in administering the WIC Program may not, without prior written approval from the WIC Director or his designee or the director of the local health district:~~ Local agency personnel involved in the WIC eligibility, certification, and food benefits process shall not:

1. Act as a proxy for a participant;

2. Have a direct financial interest in an authorized WIC retailer; or

3. Complete an onsite stocking visit of an authorized retailer at which they or a relative is employed.

B. Individuals involved in administering the WIC Program shall not certify or issue food instruments to themselves or relatives.

C. Additional conflict of interest regulation may be found in 12VAC5-195-460.

D. This section is not meant to replace or abrogate the Virginia State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

12VAC5-195-240. Emergency situations.

Local agencies shall follow emergency procedures in the event of an emergency situation. Procedures to continue WIC benefits shall be incorporated by the local agency into the district ~~Office Emergency and Business Recovery Plan~~ office's emergency and business recovery plan.

Part III
Retailer Requirements

12VAC5-195-280. Enrollment procedures.

A. The state agency shall accept applications from new retailer applicants year round.

B. Retailers seeking authorization shall comply with 7 CFR 246.12 and sell a range and variety of staple foods and WIC-approved formulas at a permanent fixed location, as specified in the retailer agreement and application package. Only one authorization approval will be granted by the state agency to each eligible location selected for program authorization. Stand-alone pharmacies and any other types of entities that cannot meet all of the general requirements outlined in this section shall be denied WIC Program authorization.

C. Retailer applicants shall complete the following requirements to become authorized for WIC Program participation:

1. Submit all applications, including pricing updates, using an electronic, Internet-based method that has been approved by the WIC Program;

2. Submit prices for all mandatory food and formula items, a signed retailer agreement, supplemental informational form, direct deposit ~~ACH~~ automated clearinghouse (ACH) form, and other required forms as deemed necessary to evaluate an applicant's qualifications;

3. Pass a competitiveness price assessment completed by the WIC Program. The state agency shall determine whether the prices submitted as part of the new retailer application process are price competitive when compared to other retailers located in the retailer's assigned peer group;

4. Provide documentation to the state agency, upon request, that a satisfactory business integrity record exists. None of the retailer's current owners, officers, or managers shall have been convicted of or had a civil judgment entered against them for conduct demonstrating a lack of business integrity, within the past six years;

5. Pass an unannounced onsite visit to determine if the retailer has met the minimum stocking requirement, has available for sale the variety and selection of foods as stated on the supplemental informational form, and has posted prices that are not higher than prices submitted as part of the application process. The visit shall also verify that the retailer's hours of operation and number of cash registers were accurately reported;

6. Pass an onsite visit to determine if the type and variety of foods sold would qualify the retailer to earn more than 50% of its annual sales solely from the WIC Program. If the retailer is likely to be an above 50% retailer, then it shall be denied authorization;

7. Attend a mandatory new retailer training session conducted by either state agency staff or a certified corporate trainer within 30 calendar days after the retailer passes an unannounced stocking and price verification visit. Provide documentation to the state agency within 30 calendar days after meeting all other enrollment requirements that this mandatory training has been completed;

8. Provide training to retailer personnel and cashiers on proper WIC food instrument handling procedures;

9. Return to the state agency all required paperwork within 14 days after receipt including a signed retailer agreement, if applicable; supplemental informational form; direct deposit ACH form; and other information deemed necessary to evaluate a retailer's or applicant's qualifications; and

10. Receive from the state agency a packet containing an authorization acknowledgement letter granting WIC Program authorization, a ~~Retailer Manual~~ retailer manual for the Virginia WIC Program, and a WIC window decal~~, and an authorization stamp~~.

D. Newly authorized retailers shall begin accepting WIC food instruments within 15 calendar days after receiving their ~~program authorization stamp and~~ final acknowledgment letter. Authorized retailers are required to contact the state agency in writing if the retailer is unable to meet this program requirement. Failure to begin accepting WIC food instruments within the established time frame may lead to the state agency withdrawing its authorization decision.

E. Retailer applicants that fail to meet any of the enrollment requirements outlined in this section shall be denied authorization unless the state agency determines that inadequate participant access would exist if the authorization were terminated.

12VAC5-195-300. General requirements and conditions for authorization.

A. Once enrolled, a retailer or applicant shall obtain authorization from the state agency to operate as a WIC-authorized retailer before accepting or redeeming food instruments.

B. To obtain and retain authorization, retailers shall:

1. Be Supplemental Nutrition Assistance Program authorized at the time of application or reauthorization and remain in good standing;

2. If applicable, fulfill the WIC disqualification requirement;

3. Be in operation as a business at the time of application or within 45 calendar days of application;

4. Comply with all local, state and federal statutes, regulations, and rules, including sanitation and building code regulations;

5. Submit prices using an electronic, Internet-based method ~~at least twice a year and~~ when requested by the state agency;

6. Remain price competitive when compared to other authorized retailers that are located in the same peer group;

7. Meet the mandatory minimum stocking requirement at all times and keep such stock immediately available in the customer shopping area or onsite;

8. Operate at the retailer address indicated in the state agency's application or authorization record; this address

shall be the sole location at which WIC customers purchase supplemental foods and formulas;

9. Be open for business at least 50 hours per week;

10. Meet all business integrity criteria as defined in 7 CFR 246.12;

11. Provide supporting documentation to the state agency including annual food sales information or tax records that will be used to ensure that no more than 50% of the retailer's total food sales were derived from WIC sales;

12. Comply with all corrective actions identified during prior WIC authorizations and pay all civil monetary penalties, if applicable;

13. Purchase contract and special formula from a distributor, supplier, wholesaler, or retailer who is approved by the Virginia WIC Program to sell formula; and

14. Participate in the WIC Program's direct deposit ACH process used for reimbursement and collection purposes.

C. Retailers shall not offer drive-through window or home delivery services for WIC purchases. The participant must take physical possession of purchased food and formula items at the time of transaction when the WIC food instrument is ~~signed~~ redeemed.

12VAC5-195-310. ~~Above~~ Retailer screening for food sales above 50% ~~retailer screening~~.

A. The state agency shall not authorize any applicant or retailer that is likely to derive 50% or more of its annual food sales from the sale of supplemental foods to WIC participants. Retailers already authorized by the program whose annual WIC food sales rise to 50% or more of their total food sales will have their authorization status terminated. Retailers must submit documentation that permits the state agency to complete its evaluation and identification of above 50% retailers. Failure to submit the requested documentation may lead to the retailer's authorization being terminated.

B. ~~Newly authorized retailers with six months of redemption history shall have their status reviewed to determine if they qualify as an above 50% retailer~~ The state agency shall reassess the status of new retailers within six months after authorization to determine whether or not the retailer is above 50% (7 CFR 246.12). ~~If the state agency's assessment determines the retailer qualifies as an above 50% retailer, the retailer's WIC Program authorization status shall be terminated.~~

12VAC5-195-320. Retailer agreement.

A. The retailer agreement does not constitute a license or a property right. If an authorized retailer wishes to continue to be authorized beyond the current agreement period, the retailer must reapply for authorization. All retailers must be selected under the current selection and authorization criteria being used by the state agency (7 CFR 246.12).

B. Authorized retailers shall use a single uniform retailer agreement. The maximum duration of the retailer agreement shall not exceed three years. The duration of the retailer agreement may be for a period that is less than three years, ~~depending upon whether a county or location is selected to undergo the regional authorization and selection process~~ as all agreements expire at the same time; therefore, prorated dates will be used.

C. A fully executed retailer agreement must be signed by both the authorized retailer representative and a WIC program management representative to be enforceable. The state agency shall provide the retailer or its designated contact person a copy of the signed retailer agreement or authorization acknowledgement letter after all selection and authorization requirements have been met.

D. An authorized retailer must have a signed copy of the retailer agreement for any retailer to be paid for a redeemed WIC food instrument.

E. Revisions, amendments, or modifications to the provisions of the retailer agreement shall be made in writing. The retailer agreement shall be automatically amended upon written notice from the state agency if federal or state laws or regulations require amendments.

F. Authorized retailers shall keep a copy of the updated ~~Retailer Manual~~ retailer manual, including a copy of the WIC Approved food list, formula flyer, and Cashier Training Guide, at the authorized retailer location.

G. If ~~the~~ a retailer appeals an administrative action imposed by the state agency against a retailer and the retailer agreement would otherwise expire during the appeal process, then the state agency shall grant an extension of that retailer's retailer agreement during the pendency of the appeal process. Once an appeal decision has been made, the state agency will proceed with either terminating the existing agreement or issuing a new agreement.

12VAC5-195-340. Competitive pricing.

A. Authorized retailers and applicants shall submit pricing information to the state agency. Item pricing data is obtained from authorized retailers and applicants using prices that have been entered into a WIC-approved Internet-based application.

B. The state agency shall collect pricing information for specific food items at least twice a year (7 CFR 246.12). Prices may be collected more frequently from authorized retailers for reasons including:

1. A retailer's prices are determined to be noncompetitive;

2. A retailer is designated as a ~~high-risk~~ high-risk retailer;

3. An administrative review is being conducted as part of a compliance investigation, onsite monitoring visit, participant access analysis, inventory audit, or post payment analysis; or

4. Other operational considerations that may occur including a change of contract formula company, a change of infant food company, food industry price fluctuations, and manufacturer's price increases for selected WIC-approved products, such as baby foods, contract formula, and infant cereal.

C. Retailers and applicants must submit the highest shelf price for all mandatory foods and formula brands, unless stated otherwise, that are available and eligible to be sold to participants. For milk items only, retailers must submit the price for their WIC designated brand. All prices submitted via the Internet-based application shall be used for calculating the reimbursement maximums. Retailers must use the approved food list and the minimum stocking requirement to identify all eligible brands and foods.

D. Retailers failing to submit their prices within 14 days of the due date stated in the ~~Retailer Manual~~ retailer manual shall receive one warning letter. After receiving ~~this~~ the letter, retailers that fail to respond within the time period stated in the letter may have their WIC Program authorization terminated unless the state agency determines that inadequate participant access would exist if the retailer's authorization were terminated.

E. Applicants whose prices are determined to be noncompetitive when compared with other authorized retailers in the same peer group shall be denied WIC Program authorization. These applicants shall not be given a second opportunity to resubmit their prices unless the state agency determines that inadequate participant access would exist if the application was not considered.

F. Authorized retailers whose prices are determined to be noncompetitive when compared with other retailers assigned to the same peer group shall be given one opportunity to resubmit their prices. After analyzing the prices submitted from this second submission, the state agency shall determine if the retailer qualifies to remain authorized. The state agency shall terminate the retailer's authorization if its prices are noncompetitive unless the state agency determines that inadequate participant access would exist if the retailer's authorization were terminated.

G. The applicant's physical retailer address shall be classified as being located either in an urban or rural location based on the county or city where the retailer is located. Retailer applicants located outside of Virginia shall be assigned to the rural category.

Rural Areas[1]	Cities: Norton, Suffolk Counties: Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henry, Highland, Isle of Wight, King and Queen, King George, King William, Lancaster, Lee, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Powhatan, Pittsylvania, Prince Edward, Prince George, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Southampton, Spotsylvania, Surry, Sussex, Tazewell, Warren, Washington, Westmoreland, Wise, Wythe
Urban Areas[1]	Cities: Alexandria, Bedford, Bristol, Buena Vista, Charlottesville, Chesapeake, Clifton Forge, Colonial Heights, Covington, Danville, Emporia, Fairfax, Falls Church, Franklin, Fredericksburg, Galax, Hampton, Harrisonburg, Hopewell, Lexington, Lynchburg, Manassas, Manassas Park, Martinsville, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Radford, Richmond, Roanoke, Salem, Staunton, Virginia Beach, Waynesboro, Williamsburg, Winchester Counties: Arlington, Chesterfield, Fairfax, Henrico, James City, Loudoun, Prince William, Roanoke, Stafford, York
[1]The state agency uses the Isserman model for determining what cities and counties are considered urban and rural settings. This model was created for the ~~United States~~ U.S. Department of Agriculture and was published in "In the National Interest: Defining Rural and Urban Correctly in Public Policy" (International Regional Science Review, 28, 4:465 - 499 (2005))	

Authorized retailers are assigned to a peer group based on their designation of rural or urban and the number of cash registers located in the retailer. Peer groups are defined as follows:

Peer Group	Description	Location
06	Special formula contractor	Other
50	One to four cash registers	Rural
51	Five to nine cash registers	Rural and under $100,000 in annual WIC sales
52	Five to nine cash registers	Rural and over $100,000 in annual WIC sales
53	10 and above cash registers	Rural
60	One to four cash registers	Urban
61	Five to nine cash registers	Urban and under $100,000 in annual WIC sales
62	Five to nine cash registers	Urban and over $100,000 in annual WIC sales
63	10 and above cash registers	Urban

H. For newly authorized retailers and applicants, the peer group designation assigned during the first three months shall be determined by the retailer's location and number of cash registers. For the peer group designation of newly authorized retailers that have five to nine cash registers, the state agency shall assume the retailer had less than $100,000 in annual WIC sales.

I. All retailers that have five to nine cash registers shall have their WIC sales data calculated by the state agency every six months to determine if the retailer's annual WIC sales are projected to be under or over $100,000. If the retailer's WIC sales have changed, then the retailer's assigned peer group shall change to reflect its redemption status.

J. Retailers that increase or decrease ~~their~~ the number of cash registers must notify the state agency in writing within 15 calendar days. An onsite visit may be conducted by the state agency to confirm the number of operational cash registers. Retailers that knowingly misrepresent ~~their~~ the number of cash registers may have their authorization status terminated unless the state agency determines that inadequate participant access would exist if the retailer's authorization were terminated.

12VAC5-195-350. Price verification.

A. Authorized retailers and applicants must submit prices for all mandatory foods and formulas as defined by the state agency. Once prices have been submitted to the WIC Program, they must remain in effect for at least a 30-day period and are subject to random onsite verification by the state agency. Posted prices that are significantly higher than the prices submitted to the state agency may affect the retailer's or applicant's authorization selection status.

B. A retailer or applicant's submitted price shall be compared by the state agency to other authorized retailer in the same peer group to determine if the prices submitted are competitive. Prices shall be submitted and validated as competitive for specific food items and formulas as specified in the ~~Retailer Manual~~ retailer manual.

C. Authorized retailers and applicants shall have a pricing point value that is 40 or higher in order to remain eligible for program authorization.

Description	Price Comparison Range	Pricing Point Value
Best Pricing	Peer Group Average, minus 10% or more	100
Highly Competitive	Peer Group Average, minus 5.1 - 9.9%	80
More Competitive Pricing	Peer Group Pricing Average, plus or minus 5.0%	60
Competitive	Peer Group Pricing Average, plus 5.1 - 19.9%	40
Noncompetitive	Peer Group Pricing Average, plus 20% or higher	20

D. Authorized retailers whose prices are identified as noncompetitive when compared with other authorized retailers in the same peer group may have their WIC Program authorization terminated unless the state agency determines that inadequate participant access would exist if the retailer's authorization were terminated.

E. Authorized retailers that fail to submit a price for optional food and formula items may have redeemed food instruments selected as ineligible for payment as part of the ~~postpayment~~ post-payment review process. ~~These~~ The improperly redeemed food instruments may be identified as a retailer claim and may be subject to repayment of the full amount paid for all of the items prescribed on the food instrument.

12VAC5-195-370. Authorization exception decisions.

The state agency may make authorization exceptions to ensure that adequate access exists based on at least one of the following criteria:

1. Provide reasonable access;

2. Provide safe access due to a physical barrier or impediment including a multilane highway, river, bridge~~;~~, or physical terrain (i.e., mountains);

3. Provide ~~a~~ best pricing or a highly competitive alternative retailer location to eligible participants to purchase WIC-approved foods, when compared to other available retailers located within a given city ~~and/or~~ or county;

4. Promote competition in a trade area previously identified as not having a price competitive authorized retailer location available;

5. Improve customer service or remove an existing service barrier~~,~~ (i.e., language, cultural);

6. Improve WIC customer access because the retailer is within a safe and reasonable walking distance and is located in close proximity to one or several low income housing units where WIC participants reside;

7. The retailer's draw area is broader than the retailer's immediate trade area. The retailer's draw area includes cities and counties that cross geographical boundaries; or

8. Expand access to WIC eligible foods that are purchased by a specific ethnic population.

12VAC5-195-390. Approved food list.

A. A copy of the current Virginia WIC Program's ~~Approved Food List~~ approved food list and formula flyer must be stored at each cash register where WIC transactions are handled. A copy of the approved food list and formula flyer must also be stored in the ~~Retailer Manual~~ retailer manual kept onsite at the authorized retailer location.

B. The approved food list shall be used in conjunction with the WIC food instrument to identify foods that are eligible for purchase using WIC food instruments. The food instrument may state a specific ~~manufacturers or brands that are not covered by the general description used in the approved food list that must be purchased by program participants~~ food category and quantity available for purchase by program participants at authorized retailers.

C. The formula flyer shall be used in conjunction with the WIC food instrument to identify formula and medical foods that are eligible for purchase using WIC food instruments. The food instrument shall state the specific manufacturer, type, and quantity of formula that must be purchased by program participants.

D. Authorized retailers shall sell WIC-designated brands for food categories identified in the approved food list. Authorized retailers shall use shelf labels approved by the state agency to identify the WIC-designated brands ~~that are declared using the state agency's Internet-based application~~ in accordance with the state's shelf label requirement guidelines.

12VAC5-195-400. ~~Authorization stamp – assignment and usage.~~ (Repealed.)

~~A. The state agency shall assign a unique stamp number to each authorized retailer. The retailer's authorization number shall be imprinted on a rubber stamp, which shall be used on every food instrument deposited by the authorized retailer location. Failure by the retailer to use the issued authorization stamp may result in payment being denied for redeemed WIC food instruments or, if a pattern of noncompliance is documented, the termination of a retailer's authorization unless the state agency determines that inadequate participant access would exist if the authorization were terminated.~~

~~B. Authorized retailers must obtain any needed replacement stamps from the stamp supplier approved by the state agency. The state agency shall provide a maximum of three stamps to an authorized retailer per contract period at no charge. Failure to purchase an approved stamp from the designated stamp supplier may lead to deposited food instruments being rejected and returned unpaid by the state agency.~~

~~C. If a stamp overlay process is requested by an authorized retailer, the state agency may waive the requirement to use a rubber stamp on deposited food instruments. The stamp overlay process shall result in the assignment of a unique identification number that must be tested and approved by all affected parties. Retailers must submit a written request to the state agency at least 60 days prior to implementing the stamp overlay. If the request is approved, the state agency shall send written approval to the corporate office of the retailer requesting the stamp overlay. Failure to obtain written approval may lead to food instruments being returned unpaid by the banking contractor.~~

12VAC5-195-410. Change of ownership.

A. Authorized retailers shall provide the state agency with advance written notice at least 15 calendar days prior to any change of ownership as outlined in 7 CFR 246.12.

B. A change of ownership occurs when the principal owner, owners, or corporate officers of the business or corporation are legally or permanently changed.

C. A retailer's authorization shall be terminated by the state agency upon a change of ownership. The rights and obligations established under a signed retailer's agreement with the WIC Program may not be transferred or ~~assigned~~ reassigned by the retailer or corporate owner to any other third party.

D. The new owner or retailer manager of the business or corporation shall apply for WIC Program authorization and submit ~~his qualifications and~~ a new application for evaluation based on the most current retailer selection and authorization criteria.

E. The state agency shall terminate the authorization status of any retailer that has undergone a change of ownership and failed to notify the state agency in accordance with the requirements outlined in the signed ~~Retailer Agreement~~ retailer agreement.

12VAC5-195-450. Complaints.

A. The state agency shall maintain a system of receiving, documenting and investigating all complaints submitted by retailers, participants, proxies, caretakers, parents, and the general public. On the basis of a written complaint, the state agency may take action against participants and retailers that abuse or misuse program benefits as outlined in the State Plan and ~~Retailer Manual~~ retailer manual.

B. The state agency shall forward complaints of both alleged discrimination and civil rights violations to the Secretary of Agriculture as required by ~~federal regulations~~ 7 CFR Part 246.

12VAC5-195-520. Training and education.

A. Training of applicants or authorized retailers may be conducted by state agency staff. The state agency may also delegate authority to trained individuals who have been certified as corporate trainers. Certified corporate trainers shall attend ~~at least one~~ mandatory WIC training ~~class annually~~ as required in order to remain certified.

B. The state agency shall provide mandatory annual training for previously authorized retailers. The annual training requirement may be met by the previously authorized retailers:

1. Submitting a newsletter training acknowledgement form;

2. Successfully completing an agency-sponsored Internet training course offered by the WIC Program; or

3. Attending an approved instructor-led, interactive training class.

C. Reauthorization training shall be required for previously authorized retailers that have been selected under a new contract period.

D. Authorized retailers may request remedial training at any time by contacting the state agency.

E. All authorized retailers are required to have at least one representative participate in annual training provided by either the state agency or a certified corporate trainer (7 CFR 246.12).

F. Failure of an authorized retailer to meet the mandatory training requirements shall result in sanctions being imposed and the possible termination of the retailer's program authorization, unless the state agency determines that inadequate participant access would exist if the authorization were terminated.

12VAC5-195-540. Retailer manual for the Virginia WIC Program.

Periodically, individual sections of the ~~Retailer Manual~~ retailer manual may be updated to reflect federally mandated regulatory changes and other WIC Program requirements. The most current version of the ~~Retailer Manual~~ retailer manual is located on the state agency's website, which retailers must access to obtain updated copies of procedures and forms.

12VAC5-195-550. ~~High risk~~ High-risk retailers.

A. A high-risk retailer is a retailer who has a high probability of committing a vendor violation due to meeting specific high-risk indicators. The state agency shall classify each authorized retailer as either ~~high risk~~ high-risk, probationary, or ~~nonhigh risk~~ non-high-risk. ~~In accordance with federal regulations (7 CFR 246.12), high risk retailers have demonstrated from prior authorization history a pattern of noncompliance with documented retailer management policies or violations documented from covert, undercover buys. The state agency may also change a retailer's designation to high risk based upon noncompliance documented from onsite monitoring visits or inventory audits. All of these overt and covert visits shall be conducted during hours the retailer is open to the general public, including weekdays, weekends, and holidays.~~

~~The state agency may select retailers for compliance monitoring based on statistical trends documented from retailers' redemption patterns. A retailer's designation will only be changed to high risk as result of documented violations identified by compliance investigations or other types of objective monitoring practices used by the state agency. Retailers shall also be changed to high risk if:~~

~~1. The retailer has been the subject of a compliance investigation by the state agency and has been cited for five or more chargeable violations within 12 consecutive months;~~

~~2. The retailer has received a Supplemental Nutrition Assistance Program civil monetary penalty or WIC program civil monetary penalty and is being retained in lieu of disqualification;~~

~~3. The retailer's authorization status is under consideration for possible disqualification during the administrative review or appeal process; or~~

~~4. The retailer has been the subject of an inventory audit and the documented results identify a significant~~

~~discrepancy between the retailer's inventory, purchasing records, and WIC redemption sales.~~

~~All retailers classified as high risk shall receive written notification from the state WIC Program to advise them of the retailer's status change prior to the change becoming effective. Retailers shall be designated high risk for a minimum one year period and will have their status periodically evaluated by the state agency.~~

B. ~~If a retailer is retained in lieu of disqualification or its status is changed to high risk, a written assurance letter must be submitted to the state agency within 30 calendar days after being notified of this requirement. The retailer's assurance letter must detail the actions the retailer will take to improve its performance~~ The state agency will identify high-risk retailers at least once a year using criteria developed by FNS or other FNS-approved, statistically-based criteria developed by the state agency.

C. ~~Authorized retailers designated as high risk shall be selected for more frequent onsite and covert monitoring investigations.~~ Any retailer receiving a WIC program civil monetary penalty and that is being retained in lieu of disqualification may be designated as high-risk.

D. Retailers are designated high-risk for a minimum one-year period and will have their status periodically evaluated by the state agency. Retailers found to meet high-risk indicators during the course of a year after the state conducts its annual high-risk vendor analysis may be identified as high-risk at the discretion of the state agency. Authorized retailers designated as high-risk may be selected for more frequent onsite and covert monitoring investigations.

E. If a retailer is retained in lieu of disqualification, a written assurance letter must be submitted to the state agency within 30 calendar days after being notified of this requirement or another mutually agreed upon timeframe made in writing. The retailer's assurance letter must detail the actions the retailer will take to improve performance.

12VAC5-195-560. ~~Nonhigh risk~~ Non-high-risk retailers.

Authorized retailers that have participated in the WIC Program for more than one continuous year and have demonstrated an acceptable level of compliance in meeting program requirements are considered ~~nonhigh risk~~ non-high-risk retailers.

12VAC5-195-570. Probationary retailers.

Newly authorized retailers with less than one year of continuous program authorization shall be designated as a probationary retailer. During a probationary retailer's first year ~~it~~, the retailer will be more frequently monitored through both unannounced and onsite monitoring visits, as well as being selected for at least one compliance investigation.

12VAC5-195-580. Performance and administrative monitoring.

A. All applicants must successfully pass an unannounced stocking visit prior to being authorized. Applicants shall receive a written letter from the state agency advising them that their retailer has been selected for further authorization consideration, which will include an unannounced stocking visit. The applicant shall receive a copy of the minimum stocking requirement and the letter ~~sent to the retailer~~ shall identify the consequences of failing to meet this program standard.

B. The state agency shall monitor authorized retailers' performance throughout the contract period in order to ensure the best qualified retailers are authorized. The type and level of monitoring conducted by the state agency shall depend upon the retailer's authorization status. Trained local agency staff, state agency staff, and other specially trained contractors may conduct onsite visits to ensure compliance with ~~basic~~ minimum stocking requirements and administrative program requirements. Retailers designated as ~~high risk~~ high-risk retailers and probationary retailers are more likely to be selected for unannounced monitoring visits by the WIC Program.

C. Authorized retailers that fail to consistently comply with any of the general requirements and conditions for authorization may be terminated. The state agency shall monitor:

~~1. Number of paid and rejected food instruments;~~

~~2.~~ 1. Prices charged for WIC-approved foods and formula;

~~3.~~ 2. Level of compliance with program requirements;

~~4.~~ 3. Use of approved wholesalers and suppliers for purchasing WIC-approved foods and formulas; and

~~5.~~ 4. Compliance with retaining purchasing records for WIC-approved foods and formulas.

D. The state agency shall establish and communicate the minimum stocking requirement to all authorized retailers and applicants.

E. Each federal fiscal year, a sample of authorized retailers shall be selected for one or more unannounced onsite monitoring visits.

F. Agency representatives may conduct an unannounced monitoring visit to ensure that authorized retailers or applicants meet all program requirements. Authorized retailers and applicants shall have the minimum stocking requirement available onsite at all times. The required specific foods, contract formulas, and administrative procedures are outlined in the ~~Minimum Stocking Requirement~~ minimum stocking requirement in the ~~Retailer Manual~~ retailer manual.

G. Agency representatives shall conduct unannounced monitoring visits during hours the retailer is open to the public. Authorized retailers must submit any changes to their normal hours of operation to the state agency in writing.

~~H. Authorized retailers with more than one year of continuous participation in the program may request in writing to the state agency that a waiver be granted for one or more items that are part of the minimum stocking requirement. The state agency shall provide a written decision regarding the retailer's waiver request within 30 calendar days after receipt. The waiver to the minimum stocking requirement for a required item shall expire upon the presentation to the retailer, on behalf of a participant, of a WIC food instrument for the purchase of that required food item. The authorized retailer shall provide the food item within 48 hours, excluding weekends and holidays, after presentation of the WIC food instrument.~~

~~I.~~ H. The state agency may conduct other types of unannounced onsite monitoring visits to a retailer's location including random, price verification, formula audits, purchased formula records review, and ~~high risk~~ high-risk.

~~J.~~ I. During an unannounced onsite monitoring visit, the state agency representative may:

1. Observe and document the level of compliance with general program requirements;

2. Validate if the minimum stocking requirement has been met;

3. Validate if administrative requirements have been met;

4. Collect and confirm prices submitted by retailers;

~~4.~~ 5. Confirm prices are posted on or in close proximity to WIC-approved foods;

~~5.~~ 6. Review purchase or invoice records;

~~6.~~ 7. Conduct formula inventory analysis;

~~7.~~ 8. Educate the retailer about program changes;

~~8.~~ 9. Provide educational materials and supplies;

~~9.~~ 10. Provide technical consultation;

~~10.~~ 11. Confirm WIC-approved shelf labels are being used correctly to identify WIC-designated brands; and

~~11.~~ 12. Confirm the number of reported cash registers.

~~K.~~ J. During the unannounced onsite monitoring visits, retailer management may receive:

1. Answers to technical or procedural questions;

2. Updated program information;

3. Additional training materials and supplies;

4. Opportunity to correct documented deficiencies, if needed;

5. Opportunity to provide shelf prices of WIC-approved items, if applicable; and

6. Opportunity to confirm results documented by the state agency representative during the monitoring visit.

~~L.~~ K. The results from these onsite visits are documented and kept on file at the state agency office in Richmond, Virginia.

~~M.~~ L. Each federal fiscal year, a sample of authorized retailers shall be selected for one or more announced onsite formula monitoring visits. The state agency shall ensure that authorized retailers sell formulas that have been purchased from a WIC-approved supplier, distributor, wholesaler, or authorized resource. A listing of WIC-approved suppliers, distributors, wholesalers, and authorized resources is located on the state agency's website. State agency personnel shall review formula purchasing records and invoices, compare formula redemption data from WIC sales, and complete a prephysical and ~~postphysical~~ post-physical inventory of formula available at the retailer location during a specific analysis period. Retailers whose purchase records do not support the quantity of WIC sales volume for a selective formula item based upon redeemed food instruments may be issued sanctions, fined, or disqualified from the WIC Program. The results from a formula monitoring visit shall be documented and a written assessment shall be sent to the retailer once the state agency has completed its analysis.

~~N.~~ M. Authorized retailers that do not remain price competitive, fail to maintain the minimum stocking requirement, or fail to adhere to the retailer agreement may be fined or have their authorization terminated unless the state agency determines that inadequate participant access would exist if the authorization were terminated. Depending upon the service delivery impact, the state agency may temporarily waive terminating a retailer that fails to comply with any of these requirements until an alternative retailer located in the same area can be authorized. The state agency shall document the reasons for making any authorization exception decisions.

12VAC5-195-590. Reimbursement and payments.

A. ~~The state agency shall use a prepayment edit process to screen all deposited food instruments.~~ For each processed food instrument, the state agency shall ~~either~~ do one of the following:

1. Pay as submitted;

2. Make a price adjustment, if applicable; or

3. Deny payment of the ~~deposited~~ redeemed food instrument.

B. The state agency's reimbursement responsibilities ~~in making payments against deposited and undeposited food instruments~~ include~~, but are not limited to~~:

1. Ensuring payments are made to authorized retailers that have a signed retailer agreement with the Virginia WIC Program. Unauthorized retailers will not be paid for any mistakenly accepted and deposited food instruments;

2. Ensuring the maximum reimbursement levels used by its banking contractor, based upon peer groups, are reasonable for the food and formula items prescribed for purchase by participants;

~~3. Reconsidering for payment WIC food instruments not paid or partially paid provided the food instruments are submitted to the state agency within 50 calendar days of the first date printed on the food instrument;~~

~~4.~~ 3. Making price adjustments to the reimbursement amount paid to retailers in order to ensure individual retailer's reimbursement levels remain eligible for authorization, based upon competitive prices charged by similar retailers;

~~5.~~ 4. Collecting bank account and routing numbers from applicants and authorized retailers in order to process direct deposit ~~ACH~~ automated clearinghouse (ACH) payments;

~~6.~~ 5. Ensuring prompt ACH credits are made to the retailer's bank account when appropriate;

~~7.~~ 6. Collecting retailer's prices using an electronic, Internet-based application;

~~8.~~ 7. Identifying retailers whose prices are noncompetitive and take administrative actions including possible termination of the retailer's authorization;

~~9.~~ 8. Complying with all federal regulations and guidelines that require administrative approval by USDA prior to making payments, as applicable;

~~10.~~ 9. Providing written communications to all authorized retailers containing the procedures used by the program to pay or deny payments for all ~~deposited~~ redeemed food instruments; and

~~11.~~ 10. Recouping overpayments due to banking or procedural errors, if applicable, from authorized retailers.

~~C. Authorized retailers must deposit food instruments within 14 calendar days of the last date printed on the food instrument.~~

~~D. Food instruments or image replacement documents (IRDs) rejected for payment due to "unreadable authorization stamp" or "no authorization stamp" error messages must be corrected and redeposited within 30 calendar days of the last date printed on the food instrument.~~

~~E. All food instruments or IRDs rejected for payment or undeposited food instruments require WIC Program review for exception payment consideration and must be submitted by the authorized retailer to the state agency. The state agency reserves the right to deny a submitted request for payment depending on the explanation provided by the retailer or bank of first deposit. Approved exception payments will only be made to an authorized retailer.~~

~~1. Retailers must submit their undeposited or rejected food instruments or IRDs and justifications to the state agency within 30 calendar days of the last date printed on the food instrument. A retailer must also simultaneously submit a written request and justification for payments on undeposited or rejected food instruments or IRDs.~~

~~2. Undeposited or rejected food instruments or IRDs sent to the state agency that are greater than 30 calendar days from the last date printed on the food instrument may not be eligible for payment and may require USDA approval.~~

~~3. Food instruments or IRDs rejected for payment due to a processing error that originates either at the federal reserve or bank of first deposit may be considered for an exception payment. The food instruments or IRDs must be submitted to the state agency within 120 calendar days from the first date to spend printed on the food instrument. A bank representative must submit a written request with the unpaid food instruments or IRDs.~~

~~F.~~ C. A ~~maximum allowable reimbursement~~ not to exceed (NTE) amount for each peer group and ~~food item combination~~ UPC is established using ~~pricing~~ sales data (7 CFR 246.12). ~~Each food item combination is identified by a unique food instrument type identifier. More than 4,000 unique food combinations exist with different reimbursement maximum amounts. Authorized retailers that submit prices determined to be noncompetitive will not have their prices used when the state agency computes the maximum allowable reimbursement amount used for making price adjustments.~~

~~G. Retailers may only get reimbursed for mandatory and optional foods and formula products they have submitted prices for prior to redeeming food instruments for those products. Redeemed food instruments may be subject to repayment as a retailer claim if they include optional items for which a retailer has failed to submit prices. Retailers must ensure that the most current shelf prices have been submitted to the WIC Program for all mandatory items. Failure to submit prices or providing inaccurate prices for any mandatory food items may lead to a retailer's authorization being terminated unless inadequate participant access would exist.~~

~~H. Contract and special formulas where pricing information is collected via the Internet based application by the state agency are eligible for payment to authorized. Prices are purposely not collected by the state agency for formulas that~~

~~should not be redeemed at retailers. Food instruments redeemed for these types of special formulas are subject to repayment by the retailer.~~

~~I. A maximum reimbursement amount will be established for cash value food benefits used by participants to purchase fruits and vegetables. The amount written on the food instrument must not exceed the maximum reimbursement amount printed on it.~~ D. For cash value food benefits only, the retailer must offer one of the following options to the participant if the total dollar amount being purchased exceeds the printed cash value:

1. The participant shall be allowed to pay the amount over the printed cash value; or

2. The participant shall be allowed to reduce the quantity of eligible fruits and vegetables being purchased.

Retailers must notify the state agency in writing which of these options they provide to WIC participants.

~~J.~~ E. The ~~food instrument type/peer group pricing maximum amount~~ peer group and UPC NTE may be adjusted ~~monthly~~ weekly by the state agency, depending upon external factors including~~, but not limited to,~~ wholesale price increases. The ~~reimbursement maximum~~ NTE used for the various ~~food instrument types~~ peer group combinations ~~are~~ is not distributed to authorized retailers prior to being used by the banking contractor.

~~K. Food instruments or IRDs that are ineligible for payment and are rejected will be returned to the retailer's depository bank by the state agency's banking contractor. These returned food instruments will be stamped with a descriptive error message.~~

~~L. The state agency may make payment exceptions for food instruments that would normally be denied payment by its banking services contractor. The authorized retailer shall submit all such requests in writing, including a justification, within 30 calendar days from the last date printed on the food instrument. The state agency will send a payment disposition decision to the requestor within 30 calendar days, after receipt.~~

~~M.~~ F. The state agency shall use a ~~postpayment~~ post-payment review process to prospectively evaluate the reimbursement amount paid against redeemed food instruments in order to identify excessive or improperly redeemed food instruments in accordance with federal regulations (7 CFR 246.12). From the ~~postpayment~~ post-payment review process, the state agency may determine that one or more payments already made to a retailer were ineligible for payment as a result of a retailer failing to ~~submit pricing data for the purchased item or items~~ provide the cardholder with foods that were taken off the eWIC card. The state agency reserves the right to bill and recoup payments of these ineligible payments, which will be referred to as a retailer claim (7 CFR 246.12). The state agency shall not bill an authorized retailer if the retailer claim amount is less than $10.

~~N.~~ G. A retailer that is not authorized to participate in the Virginia WIC Program that accepts a food instrument will not be reimbursed for any food instruments redeemed by a WIC participant.

~~O.~~ H. A retailer must submit a direct deposit ACH form to the state agency that identifies any bank changes to its routing or account number. A direct deposit ACH form must be submitted at least 14 days prior to the change effective date. If the state agency's banking contractor identifies that the retailer's bank account or routing number is not valid, then the retailer will receive one written notice from the state agency. Failure by the retailer to resolve any reported discrepancies within 30 days after a written notice has been sent by the state agency may lead to the retailer being ineligible to receive payments for rejected food instruments.

~~P.~~ I. Retailers are responsible for all bank handling fees and charges associated with doing business with the WIC Program.

12VAC5-195-600. Sanctions and administrative actions.

A. Each federal fiscal year, the state agency shall conduct compliance investigations on a minimum of 5.0% of authorized retailers (7 CFR 246.12), including completing investigations of all ~~high risk~~ high-risk retailers, all probationary retailers, and ~~selective nonhigh risk~~ select non-high-risk retailers. The state agency will conduct at least two compliance buys at each retailer selected for an investigation.

B. The state agency shall provide written notification to the authorized retailer of the investigation results, including the retailer's violation of any statutes or regulations governing its participation in the WIC Program. Once an investigation has been closed, retailers with documented violations shall receive a final written report of the agency's findings. The final report will identify what administrative action shall be taken by the state agency against the authorized retailer.

C. Violations shall be categorized as either state agency or federally mandated. For federally mandated violations, a pattern consisting of four documented incidents of the same violation must occur during a single investigation unless a pattern requirement is not required by federal regulations.

D. For federally mandated violations including overcharge, fraud, trafficking in food instruments, selling firearms, ammunition, explosives, controlled substances, alcohol or alcoholic beverages, or tobacco products, the state agency may not provide the retailer with prior written notice that ~~a violation or~~ violations were documented before imposing administrative sanctions. This notification decision will be made on a case-by-case basis, depending on the type of federally mandated violation documented and if it is

determined that notification would compromise the investigation.

E. The type of documented violation dictates the administrative action taken including:

1. Provision of a written warning;

2. Imposition of a technical penalty fine;

3. Assessment of a civil monetary penalty (CMP) in lieu of disqualification; or

4. Disqualification of an authorized retailer.

The total period of disqualification imposed for state agency violations identified as part of a single investigation may not exceed one year. The state agency reserves the right to waive a disqualification requirement if the state agency determines that inadequate participant access would exist if the authorization were terminated.

F. The state agency shall use a multitier sanction schedule that consists of:

Class:	Description:	Description:	Administrative Actions:
A	Technical program violations	Represents procedural and food instrument handling errors.	$100 fine assessed per documented incident, as outlined in the Sanction/Violation schedule, including repeat incidents of the same violation, plus a written warning sent to the retailer.
B	Serious program violations	Represents noncompliance errors documented by compliance investigations, inventory audits, or noncompliance with provisions outlined in the retailer agreement.	One-year disqualification for eight or more technical program violations, as outlined in the Sanction/Violation schedule, within a consecutive 12-month period of time; or One-year disqualification, if a pattern of noncompliance exists, as outlined in the Sanction/Violation schedule.
C	Critical program violations	Represents mandatory federal sanctions that require a pattern of noncompliance, i.e., overcharging.	Four documented incidents during a single investigation as outlined in the Sanction/Violation schedule – Three-year disqualification; or One documented incident as outlined in the Sanction/Violation schedule during a single investigation if a pattern is not required – Three year disqualification.
D	Major program violations	Represents mandatory federal sanctions, i.e., administrative finding of trafficking	Six-year disqualification – only one documented incident is required as outlined in the Sanction/Violation schedule; or Permanent disqualification – only one documented incident is required, as outlined in the Sanction/Violation schedule.
E	Warning	Represents a documented violation, but does not warrant points being assessed ~~and/or~~ or a fine being charged.	Written warning sent to the retailer.

The date on which violations become effective is determined by the date indicated on the final compliance investigation letter. Class A, B, and E violations have an active life of one year, a Class C violation has an active life of three years, and a Class D violation has an active life of six years or permanent disqualification.

G. If, within a 12-month period, a retailer has three documented incidents of failure to meet the minimum stocking requirement ~~or failure to properly stamp 50 or more deposited food instruments~~, then the retailer shall be disqualified for a one-year period unless the state agency determines that inadequate participant access would exist if the authorization were terminated.

H. All documented overcharges or payments for ineligible food items identified during a compliance investigation shall be considered a retailer claim and be subject to repayment.

I. Copies of any investigative evidence collected by the state agency during a compliance investigation shall be available to the authorized retailer, upon request, after the investigation has been closed and the retailer is notified in writing of the final compliance investigation results.

J. A retailer may apply for WIC authorization after the retailer has finished the disqualification period. There is no automatic reinstatement of a retailer once the disqualification period has ended.

K. The state agency shall not issue sanctions solely as a result of complaints submitted by participants.

12VAC5-195-640. Civil monetary penalties.

A. A ~~CMP~~ civil monetary penalty (CMP) may be assessed for documented state agency and federally mandated violations (7 CFR 246.12).

B. The state agency uses a federally mandated formula to calculate both state and federally mandated CMPs that are assessed. The maximum civil monetary penalty assessed shall comply with federal requirements as outlined in 7 CFR 246.12. The state agency cannot make any reductions to the maximum CMP amount due for federally mandated violations because this formula is defined in federal regulations.

C. The same formula shall be used to calculate the civil monetary penalty for retailers retained in lieu of disqualification due to documented state agency sanctions. For state agency violations only, the state WIC director ~~of his~~ or the director's designee has the authority to reduce or waive the penalty amount being assessed against the retailer. The state agency must document in its records the specific factors supporting this administrative decision.

D. A CMP may be paid in a lump sum or through an agreed upon installment plan. Failure of the authorized retailer to pay any scheduled installments in a timely manner shall lead to the retailer's disqualification for the original disqualification period.

E. Payments shall be made by certified check, cashier check, or money order. Payments shall be made out to the Virginia WIC Program and mailed to the address identified on the penalty fine statement.

F. The state agency shall process all past due obligations including administrative fines, retailer claims, civil monetary penalties, or overcharge repayments assessed against authorized retailers in accordance with the Office of the Comptroller's Policies and Procedures, Section Number 205000 (Accounts Receivable), dated ~~June 2004~~ August 2018. The state agency shall also process all past due financial obligations in accordance with the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia).

G. The state agency shall notify the Supplemental Nutrition Assistance Program in writing within 15 calendar days after assessing a CMP against an authorized retailer being retained in lieu of disqualification.

12VAC5-195-670. Full administrative review.

A. Authorized retailers and applicants shall be offered an opportunity to request a full administrative review only for the adverse action cited in subsection O of this section.

B. The retailer or applicant has 15 calendar days from the date of receipt of the denial notice or the disqualification letter, either by letter or an electronic format, to request a full administrative review.

C. The request for the full administrative review may be mailed by ~~US~~ U.S. mail, sent by facsimile transmission or sent via email to the state agency. If the request is mailed, it must be postmarked within 15 calendar days from the date of receipt of letter or electronic notification from the state agency, whichever comes first.

D. The retailer or applicant should indicate whether he intends to be represented by an attorney when the full administrative review request is made. This does not preclude the retailer or applicant from seeking legal counsel at any time. At least five days prior to the scheduled full administrative review, the retailer or applicant must provide the state agency with copies of any written information that it wishes to use during the review and names of witnesses that it will call. Failure to provide the state agency with these items may result in rescheduling the full administrative review or the exclusion of documents and witnesses from the full administrative review.

E. Within 30 days of receipt of the retailer's or applicant's request for a full administrative review, after consulting with the retailer or applicant and the adjudication officer, the state agency shall confirm a date, time, and place for the review. For authorized retailers and applicants, the review shall be scheduled to take place within 60 calendar days after the written request is received by the state agency, unless otherwise agreed to by the parties.

F. Failure to attend the scheduled review shall lead to the retailer forfeiting ~~its~~ the rights to any further administrative reviews.

G. The retailer or applicant will have one opportunity to reschedule the full administrative ~~review's~~ review date or time. All requests to reschedule the review date or time must be submitted in writing at least 24 hours before the scheduled review date unless good cause can be shown as determined by the adjudication officer. Rescheduled reviews shall take place within four weeks of the originally scheduled date unless otherwise agreed to by the parties.

H. If the retailer representative is more than 45 minutes late to the review, this shall be considered a "no show" unless he can show good cause as determined by the adjudication officer.

I. A full administrative review shall be conducted by an adjudication officer who is employed by the Virginia Department of Health. The adjudication officer shall ensure that administrative actions taken by the WIC Program are consistently and fairly applied and that those administrative actions comply with established policies, procedures, and federal and state statutes and regulations. A representative from the state agency shall present its case to the adjudication officer and retailer or applicant representative. Conversely, the retailer owner or designated representative, which may include legal counsel, shall present its case to the adjudication officer.

J. All full administrative reviews shall be held in Richmond, Virginia.

K. After a full administrative review is held, the state WIC director shall provide written notification of the adjudication officer's decision, including the basis for the decision, to the applicant or authorized retailer within 90 calendar days of the date of receipt of the full administrative appeal review request, unless otherwise agreed to by the parties involved. This notification will also be sent to the appropriate USDA Food and Nutrition Services office.

L. Authorized retailers that are being disqualified may continue to ~~deposit WIC food instruments~~ submit reimbursement requests until a decision has been rendered by the adjudication officer. The adverse action effective date shall be postponed by the state agency pending the outcome of the review.

M. In accordance with 7 CFR 246.18, if an authorized retailer does not request a full administrative review, then disqualification becomes effective 15 calendar days after the retailer receives the state agency's written disqualification letter.

N. An authorized retailer that is being retained in lieu of disqualification for a state agency violation may elect to voluntarily withdraw from the WIC Program rather than pay a mandated civil monetary penalty. If the retailer voluntarily withdraws and does not pay the civil monetary penalty, then a disqualification status shall be documented in the state agency's records. The disqualification period may range from one to six years, depending on the type of sanctions and violations documented by the state agency.

O. The state agency shall provide a full administrative review to retailers or applicants, upon request, for the following adverse actions pursuant to 7 CFR 246.18:

1. Denial of authorization based on the application of the retailer selection criteria for minimum variety and quantity of authorized supplemental foods or on a determination that the retailer is attempting to circumvent a sanction (7 CFR 246.12);

2. Denial of authorization based upon the retailer selection criteria for business integrity or for a current Supplemental Nutrition Assistance Program disqualification or civil money penalty for hardship (7 CFR 246.12);

3. Denial of authorization based on a state agency established retailer selection criteria if the basis of the denial is a WIC retailer sanction or a Supplemental Nutrition Assistance Program withdrawal of authorization or disqualification;

4. Denial of authorization based on the state agency's retailer limiting criteria (7 CFR 246.12);

5. Denial of authorization because a retailer submitted its application outside the timeframes during which applications are accepted or processed as established by the state agency under 7 CFR 246.12;

6. Termination of a retailer agreement because of a change in ownership, location, or cessation of operations (7 CFR 246.12);

7. Termination of a retailer agreement for cause;

8. Disqualification based on a trafficking conviction (7 CFR 246.12);

9. Disqualification based on the imposition of a Supplemental Nutrition Assistance Program civil monetary penalty for hardship (7 CFR 246.12);

10. Disqualification or civil monetary penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC state agency (7 CFR 246.12);

11. Imposition of a fine or a civil monetary penalty in lieu of disqualification;

12. Denial of authorization based on the application of the retailer selection criteria for competitive price;

13. The application of the state agency's retailer peer group criteria and the criteria used to identify retailers that are above 50% retailers or comparable to above 50% retailers;

14. Denial of an application based on a determination of whether an applicant retailer is currently authorized by the Supplemental Nutrition Assistance Program;

15. A civil monetary penalty imposed in lieu of disqualification based on a Supplemental Nutrition Assistance Program disqualification under 7 CFR 246.12; and

16. Disqualification unless listed in subsection P of this section.

P. The state agency shall not provide a full administrative review to retailers that appeal the following actions, pursuant to 7 CFR 246.18:

1. The validity or appropriateness of the state agency's retailer limiting or selection criteria or retailer selection criteria for minimum variety and quantity of supplemental foods, business integrity, and current Supplemental Nutrition Assistance Program disqualification or civil monetary penalty for hardship (7 CFR 246.12);

2. The validity or appropriateness of the state agency's criteria for competitive price, including peer group criteria and the criteria used to identify retailers that are above 50% retailers or comparable to above 50% retailers;

3. The validity or appropriateness of the state agency's participant access criteria and the state agency's participant access determinations;

4. The state agency's determination whether a retailer had an effective policy and program in effect to prevent trafficking and that the ownership of the retailer was not aware of, did not approve of, and was not involved in the conduct of the violation (7 CFR 246.12);

5. Denial of authorization if the state agency's retailer authorization is subject to the procurement procedures applicable to the state agency;

6. The expiration of the retailer's agreement;

7. Disputes regarding food instrument payments and retailer claims other than the opportunity to justify or correct a retailer overcharge or other error as permitted by (7 CFR 246.12);

8. Disqualification of a retailer as a result of disqualification from the Supplemental Nutrition Assistance Program (7 CFR 246.12);

9. The state agency's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to 7 CFR 246.12;

10. The state agency's determination whether to notify a retailer in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction; and

11. The validity or appropriateness of the state agency's prohibition of incentive items and the state agency's denial of an above 50% retailer's request to provide an incentive item to customers pursuant to 7 CFR 246.12.

Q. A full administrative review request shall not be denied or dismissed unless:

1. The request to the state agency is not postmarked or received within 15 calendar days of the applicant or authorized retailer's receipt of the notice of disqualification or adverse action;

2. The request to the state agency is submitted by an individual who does not have the legal or delegated authority to represent the applicant or authorized retailer;

3. The retailer or authorized representative withdraws the request in writing;

4. The retailer or authorized representative fails to appear at the scheduled review date and time without good cause as determined by the adjudication officer; or

5. The request for a full administrative review is not eligible for this consideration based on the specific exclusion criteria outlined in subsection P of this section.

12VAC5-195-680. Food application process.

A. ~~Food~~ WIC eligible food items that are ~~approved for purchase by eligible WIC participants must have a food application~~ submitted by retailers, manufacturers, and distributors for WIC participants must be reviewed and approved by the state agency. The food application process does not apply to WIC approved formulas.

B. The state agency shall conduct a review of the approved foods every two years. Food applications shall be accepted and processed during a two-month period.

C. The state agency shall notify prospective manufacturers, suppliers, and distributors when food applications will be accepted by sending them an announcement letter. The state agency shall also post the food application announcement letter on the state agency website.

D. The state agency shall maintain a database with the contact names and companies who previously submitted food applications or expressed an interest in having their products considered for WIC approval. Individuals may request to be added to the database on behalf of manufacturers by completing a food application contact form~~, which is an online form located on the state agency's website at~~ http://www.vdh.virginia.gov/livewell/programs/wic/content/retailers/documents/UPCUpdateRequestForm.pdf.

E. Incomplete food applications or late submissions shall not be eligible for selection and inclusion on the WIC approved food list.

F. The state agency is responsible for evaluating all completed food applications to ensure each product meets both federal and state nutritional and administrative guidelines.

G. After the food application evaluation and selection process has been completed, a new food list will be printed and distributed to local agencies, WIC participants, and retailers by the state agency. The state agency shall pay all costs associated with producing, printing, and distributing the WIC approved food list. Funds from manufacturers, suppliers, distributors, or other sources shall not be used to reprint the approved food list.

H. If a manufacturer, supplier, or distributor changes the name of an approved product whose trade name appears on the approved food list, the new product shall not be automatically eligible for purchase under the current food list. The manufacturer, supplier, or distributor must submit a written request to the state agency, a sample nutritional label for the new product, and documentation outlining the product availability at authorized retailers to have the new product considered for approval. Once this information is received, the state agency shall decide on a case-by-case basis if the new product can be transitioned under the current food list or must wait for the next food list submission cycle. A new product shall not be approved prior to it being available at retailer locations. If the new product is not eligible for inclusion under the current food list, the manufacturer, supplier, or distributor may submit a new food application using the new product name when food applications are being accepted.

I. If a manufacturer, supplier, or distributor changes the nutritional formulation of an approved product, the new product shall not be eligible for purchase under the current food list. The manufacturer, supplier, or distributor must submit a new food application for the new product when food applications are being accepted.

J. Manufacturers, suppliers, or distributors shall not send product samples to the state agency at any time.

K. Changes to the approved food list made during the scheduled two-year period may be made on a case-by-case basis as determined by the state agency based on federal guidance if applicable.

~~FORMS (12VAC5-195)~~

~~Virginia WIC Program UPC Update Request Form (eff. 1/2014)~~

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-195)

~~Vendor Manual for the Virginia WIC Program, January 2011, Virginia Department of Health.~~

~~WIC Approved Food List, April 2012, Virginia Department of Health.~~

~~Virginia WIC Program's Retailer Agreement, effective November 2011(dated August 2011), Virginia Department of Health.~~

~~CAPP Manual, Volume No. 1 – Policies & Procedures, Function No. 2000 – General Accounting, Section 20500 – Accounts Receivable, June 2004, Office of the Comptroller, Commonwealth of Virginia.~~

~~Virginia WIC Program – Sanction Violation Schedule, December 1, 2011, Virginia Department of Health.~~

Retailer Manual for the Virginia WIC Program, April 1, 2018, Virginia Department of Health

WIC Approved Food Food List, April 1, 2018, Virginia Department of Health

Virginia WIC Program's Retailer Agreement, January 2019, Virginia Department of Health

CAPP Manual, Volume 1 - Policies and Procedures, Section No. 20500 - Accounts Receivable, Cardinal, August 2018, Office of the Comptroller, Commonwealth of Virginia

Virginia WIC Program - Sanction Violation Schedule, May 1, 2017, Virginia Department of Health

USDA Memo – SFP 09-020 Clarification on Use of the WIC Acronym and Logo, January 9, 2009, United States Department of Agriculture, Food and Nutrition Service.

~~Virginia WIC Program, Infant Formula Flyer, effective April 1, 2012 (dated January 1, 2012), Virginia Department of Health.~~

Virginia WIC Program Infant Formula Flyer, February 2018, Virginia Department of Health

VA.R. Doc. No. R19-5519; Filed May 31, 2019, 4:50 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-2000).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 24, 2019.

Effective Date: August 8, 2019.

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

Basis: Section 32.1-325 of the Code of Virginia grants the Board of Medical Assistance Services the authority to

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

Purpose: This regulatory revision is essential to protect the health, safety, and welfare of citizens in that it prevents rules that were originally designed for fee-for-service providers from applying to managed care organization (MCO) providers. To require providers to submit marketing materials and marketing plans to DMAS and the MCOs for approval would interfere with the oversight responsibilities of the MCO. It is essential that MCO providers remain in compliance with their MCO contract requirements, and amending this regulation ensures that providers will have one set of rules to follow so that Medicaid members and the public are provided with only appropriate marketing materials using appropriate marketing practices. MCOs are still required to comply with 42 CFR 438.104.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking action because it is expected to be noncontroversial. All community mental health (CMH) services are being carved in to MCOs, and providers will be complying with MCO contract requirements related to marketing practices. Revising this regulation will ensure that CMH providers have only one set of marketing rules to follow.

Substance: Community mental health rehabilitative services (CMHRS) were added to Commonwealth Coordinated Care Plus (CCC Plus) on January 1, 2018, and providers now contract with CCC Plus MCOs. CMHRS was added to Medallion 4.0 managed care plans beginning in August 2018. Each MCO has its own set of marketing rules, which is included in the contract that providers must sign in order to be enrolled with the MCO.

The marketing rules set forth in 12VAC30-130-2000 C 4 and E require CMH providers to submit their marketing materials to DMAS for approval prior to their use or dissemination. When a CMH provider enrolls with an MCO and contracts to follow the MCO marketing requirements, the submission to DMAS may create a conflict between the MCO oversight authority and DMAS rules. The revised DMAS rules would eliminate this possible conflict.

In order to establish consistent rules between the MCO and fee-for-service (FFS) requirements, DMAS has determined that the small number of providers that will only provide CMH services to members with a FFS benefit do not need to submit their marketing materials and plans to DMAS for prior approval. DMAS expects that there will be very few of these providers, as most will be contracted with the MCOs, and that the requirements in subdivisions C 1 through C 3 and in subsection D will operate effectively to prevent providers from conducting inappropriate marketing activities. FFS providers will continue to be required to adhere to FFS contracts, Medicaid policy, manuals, and regulations related to marketing, outreach, and publicity.

Issues: The primary advantages to the Commonwealth and the public from these regulatory changes are that the changes prevent overlap and duplication, as well as potential conflict between two sets of rules relating to marketing practices, which prevents confusion among Medicaid providers while maintaining one set of rules to ensure that providers conduct appropriate marketing efforts. There are no disadvantages to the Commonwealth or the public as a result of this regulatory action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medical Assistance Services (Board) proposes to no longer require submittal of Community Mental Health (CMH) services marketing materials for review and approval to the Department of Medical Assistance Services (DMAS) prior to their use or dissemination.

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

Estimated Economic Impact. Currently, this regulation requires in essence that marketing and promotional materials related to CMH services: 1) comply with federal and state laws, 2) completely and accurately describe all information required for customers to make fully informed decisions, 3) be distributed only to service areas in the license, and 4) be submitted to DMAS for review and approval prior to their use or dissemination.

However, CMH services were added to Commonwealth Coordinated Care Plus (CCC Plus) on January 1, 2018, and providers now contract with CCC Plus Managed Care Organizations (MCOs). Also, CMH services were added to Medallion 4.0 managed care plans beginning in August, 2018.

The contracts between DMAS and the MCOs set out the marketing rules the MCO must comply with. Then each MCO provider must comply with the marketing rules included in the MCO contract. According to DMAS, MCOs require submission of marketing plans and must approve them before their providers may proceed with the campaign. Also, almost all CMH providers are now enrolled in a MCO network. Thus, under the current language they are required to comply with their MCO's marketing rules as well as this regulation and submit to and obtain approval from DMAS creating a double system of review. The Board proposes to no longer

require submission and approval of marketing materials to and from DMAS (i.e., repeal of requirement #4). This change would also apply to a few fee-for-service only providers that do not have a contract with an MCO.

DMAS believes that the MCO contracts would ensure appropriate marketing practices for providers in an MCO network and the requirements #1 through #3 would ensure appropriate marketing practices for fee-for-service only providers.

The net impact of this proposed change is relieving all CMH providers from submitting their marketing and promotional materials to DMAS for approval and obtaining approval before commencing any marketing campaign. The review and approval have been performed by a contractor on behalf of DMAS. DMAS estimates that there were about 18 submissions of marketing materials for review and approval per month prior to shifting CMH services to CCC plus and Medallion 4. Since the shift, DMAS has not in practice required that it receive the marketing and promotional materials related to CMH services for providers in an MCO network. No longer requiring this submission of materials provides some staff time savings to MCO network providers and eliminates possible delays in commencement of their marketing campaign.

The reviews of fee-for-service only providers are still being performed. These are the providers that have no contract with any of the MCOs. The DMAS contractor has reviewed only two marketing materials from fee-for-service providers after the shift of CMH services to managed care. Therefore, small DMAS contractor staff time savings and provider staff time savings associated with submission review and approval of marketing materials from fee-for-service only providers are expected upon promulgation.

DMAS may also benefit from this change in the future as the reduced staff time from its contractor may lead to a reduction in the contract bid amount, or may allow DMAS to obtain other services at the same bid amount. Finally, this change would eliminate the possibility of a conflict or misinterpretation that could exist between two separate sets of rules relating to marketing practices.

Businesses and Entities Affected. The proposed change applies to all Medicaid CMH providers. As of March 10, 2018, there were 14,693 providers. Most of these providers are small businesses.

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

Projected Impact on Employment. The impact on providers with an MCO contract has already been realized. Thus, no impact on those providers is expected upon promulgation. The impact on the few fee-for-service providers have not been realized yet, and those providers are expected to experience some staff time savings when this change is promulgated.

Effects on the Use and Value of Private Property. Similarly, a few fee-for-service only providers should see a small positive impact on their asset values as they can reduce their labor costs by a small amount when the proposed change becomes final.

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

Small Businesses:

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

Costs and Other Effects. The proposed regulation does not impose costs on small businesses. The other effects on small businesses are the same as discussed.

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

Adverse Impacts:

Businesses. The proposed regulation does not adversely affect businesses.

Localities. The proposed regulation does not adversely affect localities.

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

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

Summary:

The amendments remove the requirement that community mental health providers submit their Medicaid marketing plans and materials to the department for review.

Part XVII
Marketing of Provider Services

12VAC30-130-2000. Marketing requirements and restrictions.

A. Purpose. The purpose of these rules shall be to define how providers shall be permitted to market their services to potential Medicaid or FAMIS beneficiaries and individuals who may or may not be currently enrolled with the particular provider. This shall apply to providers of community mental health services (12VAC30-50-226) and Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT)

community mental health services (12VAC30-50-130) with the exception of Part C services.

B. Definitions.

"Beneficiaries" means individuals of any age and their families who are using or who may use community mental health rehabilitative services.

"DMAS" means the Department of Medical Assistance Services.

"FAMIS" means Family Access to Medical Insurance Security.

"Marketing materials" means any material created to promote services through any media including~~, but not limited to,~~ written materials, television, radio, websites, and social media.

"Provider" means an individual or organizational entity that is appropriately licensed as required and enrolled as a DMAS provider of community mental health and substance abuse services.

C. Requirements.

1. Marketing and promotional activities (including provider promotional activities) shall comply with all applicable federal and state laws.

2. Providers shall provide clearly written materials that completely and accurately describe the Medicaid or FAMIS behavioral health ~~service or~~ services offered, the beneficiary eligibility requirements to receive the ~~service or~~ services, applicable fees and other charges, and all other information required for beneficiaries and their families to make fully informed decisions about enrollment into the ~~service or~~ services offered by the provider that is marketing its services.

3. Providers shall distribute their marketing materials only in the service locations approved within the license issued by the Licensing Division of the Department of Behavioral Health and Developmental Services.

~~4. Providers shall receive DMAS approval of all marketing materials and all changes to prior approved marketing materials prior to their use or dissemination. Providers shall receive the DMAS marketing plan approval before engaging in any marketing activity.~~

~~a. Within 30 calendar days of receipt of providers' submissions, DMAS shall review submitted individual marketing materials and services and either approve them or deny their use or direct that specified modifications be made.~~

~~b. Providers failing to implement DMAS' required changes, or those which use unapproved or disapproved materials, shall be subject to termination of the provider agreement pursuant to 12VAC30-130-2000 E.~~

D. Limits and prohibitions.

1. Providers shall not offer cash or noncash incentives to their enrolled or prospective members for the purposes of marketing, retaining beneficiaries within the providers' services, or rewarding behavior changes in compliance with goals and objectives stated in beneficiaries' individual service plans.

2. While engaging in marketing activities, providers shall not:

a. Engage in any marketing activities that could misrepresent the service or DMAS;

b. Assert or state that the beneficiary must enroll with the provider in order to prevent the loss of Medicaid or FAMIS benefits;

c. Conduct door-to-door, telephone, unsolicited school presentations, or other cold call marketing directed at potential or current beneficiaries;

d. Conduct any marketing activities or use marketing materials that are not specifically approved by DMAS;

e. Make home visits for direct or indirect marketing or enrollment activities except when specifically requested by the beneficiary or family;

f. Collect or use Medicaid or FAMIS confidential information or Medicaid or FAMIS protected health information (PHI), as that term is defined in Health Insurance Portability and Accountability Act of 1996 (HIPAA), that may be either provided by another entity or obtained by marketing provider, to identify and market services to prospective beneficiaries;

g. Violate the confidential information or confidentiality of PHI by sharing or selling ~~or sharing~~ lists of information about beneficiaries for any purposes other than the performance of the provider's obligations relative to its DMAS provider agreement;

h. Contact, after the effective date of disenrollment, beneficiaries who choose to disenroll from the provider except as may be specifically required by DMAS;

i. Conduct service assessment or enrollment activities at any marketing or community event; or

j. Assert or state (either orally or in writing) that the provider is endorsed either by the Centers for Medicare and Medicaid Services, DMAS, or any other federal or state governmental entities.

E. Termination. Providers that ~~(i) conduct any marketing activity that is not specifically approved by DMAS, (ii)~~ (i) violate any of the prohibitions in this section~~,~~ or ~~(iii)~~ (ii) fail to meet requirements shall be subject to termination of their provider agreements for the services affected by the marketing ~~plan/activity~~ plan or activity. Providers whose

contracts are terminated shall be afforded the right of appeal pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

VA.R. Doc. No. R19-5450; Filed June 5, 2019, 11:16 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Fast-Track Regulation

Title of Regulation: **18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists (amending 18VAC85-110-80, 18VAC85-110-180).**

Statutory Authority: §§ 54.1-2400 and 54.1-2956.9 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 24, 2019.

Effective Date: August 8, 2019.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system.

Purpose: The amendments protect the health and safety of patients who received acupuncture treatments from a licensed acupuncturist. The regulatory changes are consistent with the principle that regulations should be clearly written and easily understandable.

Rationale for Using Fast-Track Rulemaking Process: As required by Executive Order 14 (2018), the Board of Medicine conducted a periodic review of 18VAC85-110, Regulations Governing the Practice of Licensed Acupuncturists. The amendments are clarifying and intended for consistency with current practice. There are no substantive changes, so the amendments are not expected to be controversial.

Substance: Pursuant to its periodic review of 18VAC85-110, the board adopted amendments to update the name of a required examination and to the use the more inclusive term of "dietary supplements" to include herbs and herbal supplements that acupuncturists are allowed to use and recommend.

Issues: There are no substantive changes to the regulation, so there are no real advantages or disadvantages to the public. The amendments are technical and clarifying. There are no advantages or disadvantages to the agency 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 Board of Medicine (Board) proposes to use "dietary supplements" in lieu of "vitamins, minerals or food supplements" and update the name of the examination required for licensure.

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

Estimated Economic Impact. The Board is proposing to replace "vitamins, minerals or food supplements" acupuncturists are allowed to recommend to their patients with "dietary supplements." According to the Department of Health Professions (DHP), the term "dietary supplements" is used by the Food and Drug Administration (FDA) and includes herbs and herb supplements in addition to vitamins and minerals. The currently used term "food supplements" is interpreted by DHP to include herbs and herb supplements. Consequently, this proposed change will have no impact on what acupuncturists are allowed to recommend. Thus, no significant economic impact is expected from this change beyond improving the consistency between the terms used by FDA and the Board.

The Board also proposes to update the name for the Point Location Examination which used to be referred to as Practical Examination of Point Location Skills. Similarly, this particular change is not expected to create any significant impact other than improving the accuracy of the regulatory language.

Businesses and Entities Affected. The proposed amendments pertain to 529 licensed acupuncturists in the Commonwealth.

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

Projected Impact on Employment. The proposed amendments would not affect employment.

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

Real Estate Development Costs. The proposed amendments 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 amendments would not have costs or other effects on small businesses.

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

Adverse Impacts:

Businesses. The proposed amendments would not impose adverse impacts on businesses.

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=1652

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

Summary:

The amendments update the name of a required examination and use the more inclusive term "dietary supplements" to include herbs and herbal supplements that acupuncturists are allowed to use and recommend.

18VAC85-110-80. Examination requirements for licensure.

The examination requirements for licensure shall consist of:

1. Passing the NCCAOM comprehensive written examination, resulting in current, active certification by the NCCAOM at the time the application is filed with the board;

2. Passing the ~~Practical Examination of~~ Point Location ~~Skills (PEPLS) test~~ Examination; and

3. Completing the CNT course as administered by the CCAOM.

18VAC85-110-180. ~~Vitamins, minerals and food~~ Dietary supplements.

A. The recommendation or direction for the use of ~~vitamins, minerals or food~~ dietary supplements and the rationale for that recommendation shall be documented by the practitioner. The recommendation or direction shall be based upon a reasonable expectation that such use will result in a favorable patient outcome, including preventive practices, and that a greater benefit will be achieved than that which can be expected without such use.

B. ~~Vitamins, minerals, or food~~ Dietary supplements, ~~or a~~ used singly or in combination ~~of the three~~, shall not be sold, dispensed, recommended, prescribed, or suggested in doses that would be contraindicated based on the individual patient's overall medical condition and medications.

C. The practitioner shall conform to the standards of his particular branch of the healing arts in the therapeutic application of ~~vitamins, minerals or food~~ dietary supplement therapy.

VA.R. Doc. No. R19-5714; Filed June 4, 2019, 3:06 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18VAC85-120-10, 18VAC85-120-110).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.4 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 24, 2019.

Effective Date: August 8, 2019.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system.

Purpose: The amendments clarify the meaning of "direction" of an athletic trainer and will further protect the health and safety of persons who receive treatment and care from a licensed athletic trainer by clarifying the role of the doctor or dentist providing direction for such care. The regulatory change is consistent with the principle that regulations should be clearly written and easily understandable.

Rationale for Using Fast-Track Rulemaking Process: As required by Executive Order 14 (2018), the Board of Medicine conducted a periodic review of 18VAC85-120, Regulations Governing the Licensure of Athletic Trainers. The amendments are clarifying or intended for consistency with current practice and model regulatory language for the profession. There are no substantive changes, so the amendments are not expected to be controversial.

Substance: Pursuant to its periodic review of 18VAC85-120, the board has adopted amendments to define in regulation the meaning of the word "direction" to facilitate an understanding

by all parties of how an athletic trainer is allowed to practice when the licensee who is providing direction is or is not present.

Issues: The advantage to the public is facilitation of practice by an athletic trainer and a clearer understanding of the role of the doctor providing direction for such practice. There are no disadvantages to the public. The amendments are clarifying and consistent with current practice and interpretation. There are no advantages or disadvantages to the agency 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 Board of Medicine (Board) proposes to add a definition for "direction" by a physician.

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

Estimated Economic Impact. The statutory definition of "practice of athletic training" (§ 54.1-2900) includes the phrase "under the direction of" but the meaning of direction is not spelled out either in statute or in the regulation.

> "Practice of athletic training" means the prevention, recognition, evaluation, and treatment of injuries or conditions related to athletic or recreational activity that requires physical skill and utilizes strength, power, endurance, speed, flexibility, range of motion or agility or a substantially similar injury or condition resulting from occupational activity immediately upon the onset of such injury or condition; and subsequent treatment and rehabilitation of such injuries or conditions under the direction of the patient's physician or under the direction of any doctor of medicine, osteopathy, chiropractic, podiatry, or dentistry, while using heat, light, sound, cold, electricity, exercise or mechanical or other devices.(emphasis added)

During the periodic review, several athletic trainers sought clarification as to the meaning of "direction." In response to those inquiries, the Board proposes to adopt the model language developed by the National Board of Certification for the Athletic Trainer:

> "Direction" means authorization by a doctor of medicine, osteopathy, chiropractic, podiatry, or dentistry for care and treatment by a verbal order if the doctor or dentist is present or by written order, telecommunication, plans of care, protocols, or standing orders if the doctor or dentist is not present.

The proposed definition is consistent with the statute and the current interpretation of the word "direction" by the Board. Therefore, no significant economic effect is expected from this change beyond adding the clarity sought by several trainers on what "direction" means in the context of athletic training.

Businesses and Entities Affected. The proposed change pertains to the 1,589 licensed athletic trainers in the Commonwealth.

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

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

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

Real Estate Development Costs. The proposed amendment 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 amendment would not have costs or other effects on small businesses.

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

Adverse Impacts:

Businesses. The proposed amendment would not impose adverse impacts on businesses.

Localities. The proposed amendment would not adversely affect localities.

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

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[1] http://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1653

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

Summary:

The amendments add a definition of "direction" consistent with model rules of the National Board of Certification for the Athletic Trainer and with current practice that makes

clear that direction by a doctor or dentist may be by verbal or written order.

18VAC85-120-10. Definitions.

In addition to words and terms defined in § 54.1-2900 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:

"Advisory board" means the Advisory Board on Athletic Training to the board as specified in § 54.1-2957.5 of the Code of Virginia.

"Athletic trainer" means a person licensed by the Virginia Board of Medicine to engage in the practice of athletic training as defined in § 54.1-2900 of the Code of Virginia.

"Board" means the Virginia Board of Medicine.

"Direction" means authorization by a doctor of medicine, osteopathy, chiropractic, podiatry, or dentistry for care and treatment by a verbal order if the doctor or dentist is present or by written order, telecommunication, plans of care, protocols, or standing orders if the doctor or dentist is not present.

"NATABOC" means the National Athletic Trainers' Association Board of Certification.

"Student athletic trainer" means a person enrolled in an accredited bachelor's or master's level educational program in athletic training.

18VAC85-120-110. Individual responsibilities.

A. The athletic trainer's responsibilities are to evaluate the individual being treated, plan the treatment program, and administer and document treatment within the limit of his professional knowledge, judgment and skills and in accordance with the practice of athletic training as set forth in § 54.1-2900 of the Code of Virginia.

B. An athletic trainer practices under the direction of the individual's physician or under the direction of any doctor of medicine, osteopathy, chiropractic, podiatry, or dentistry.

VA.R. Doc. No. R19-5716; Filed June 4, 2019, 3:06 p.m.

BOARD OF OPTOMETRY

Proposed Regulation

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-20, 18VAC105-20-70; adding 18VAC105-20-61).**

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

Public Hearing Information:

June 28, 2019 - 9:05 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 200, Board Room 3, Conference Center, Henrico, VA

Public Comment Deadline: August 23, 2019.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Basis: Regulations of the Board of Optometry are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the board the authority to promulgate regulations to administer the regulatory system.

Purpose: The purpose is to promulgate regulations for the issuance of inactive licenses for optometrists. The regulations will include a provision that an inactive license does not authorize an optometrist to practice in Virginia and provisions for evidence of continued competency in order to reactivate an inactive license. All provisions are necessary to protect patients receiving optometric services from being seen by doctors who have not maintained continuing education and competency.

Substance: The amendments (i) add fees for inactive licensure to 18VAC105-20-20 in accordance with fee principles for all boards so that a fee for an inactive license is set at half the cost of an active license, the fee for late renewal of an inactive license is set at approximately one third the cost of renewal, and a fee for reactivation to active status is set at the difference between the renewal fee for an active license and the fee for an inactive license; (ii) add 18VAC105-20-61 with the requirements for inactive licensure, including provisions for requesting an inactive license and for reactivation of a license; and (iii) amend 18VAC105-20-70 to clarify that the requirements for continuing education pertain to maintenance of an active license.

Reactivation will require evidence of continuing education for the time of inactivity with a maximum of 40 hours or the equivalent of two years of continuing education. There is also be a provision stating that an inactive license does not authorize the practice of optometry in Virginia

Issues: There are no advantages or disadvantages to the public; the amendments will benefit optometrists who are not actively practicing by allowing them to keep their optometry license at half the cost of an active license. There are no advantages or disadvantages to the agency or the Commonwealth. The loss of revenue can be absorbed in the budget of the Board of Optometry without necessitating any increase in fees.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In response to a petition for rulemaking,[1] the Board of Optometry (Board) proposes to establish rules for an inactive optometrist licensure.

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

Estimated Economic Impact. Inactive licensure is not in the current regulation. In order to maintain licensure to practice optometry, optometrists must fill out and submit a renewal form, pay the annual renewal fee ($200 for license with TPA[2] certification, $150 for license without TPA certification), and complete 20 hours of continuing education (CE) annually.[3] The license of every person who does not complete the renewal form and submit the renewal fee each year may be renewed for up to one year by paying the prescribed renewal fee and late fee ($65 with TPA certification, $50 without TPA certification), provided the CE requirements have been met. After the renewal deadline, a license that has not been renewed is lapsed. Practicing optometry in Virginia with a lapsed license may subject the licensee to disciplinary action and additional fines by the board.

An optometrist whose license has been lapsed for more than one year and who wishes to resume practice in Virginia, must apply for reinstatement. The Department of Health Professions' executive director may grant reinstatement provided that: 1) the applicant can demonstrate continuing competence, 2) the applicant has satisfied current requirements for CE for the period in which the license has been lapsed, not to exceed two years, and 3) the applicant has paid the prescribed reinstatement application fee ($400).

The Board proposes to establish that:

> An optometrist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee [$100], be issued an inactive license. The holder of an inactive license shall not be required to maintain continuing education requirements and shall not perform any act requiring a license to practice optometry in Virginia.
>
> A licensee whose license has been inactive and who requests reactivation of an active license shall file an application, pay the difference between the inactive and active renewal fees for the current year, and provide documentation of having completed continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed 40 contact hours.

The inactive license would be beneficial for optometrists licensed with TPA certification who plan not to practice for less than three years, but not three or more years.

	Inactive License	Reinstatement
Cost while not practicing	$100 annually	$0
Required CE to resume active practice	20 hours for one year; 40 hours for two or more years	20 hours for one year; 40 hours for two or more years
Required fee payment to resume active practice	$100 for license with TPA certification; $50 for license without TPA certification	$400

The total cost of having an inactive license for three years, and then applying to reactivate the license with TPA certification would be $400[4] plus the time, fees and travel costs associated with obtaining 40 hours of CE. The total cost to just not renew the regular license, and then apply for reinstatement after three years would be $400 plus the time, fees, and travel costs associated with obtaining 40 hours of CE as well. Since $100 annual installments would have to be made with the inactive license, while no payments would be made until the end of the three years with the reinstatement route, the reinstatement route would likely be preferable. Since the cost for the reinstatement route would remain $400 plus the 40 hours of CE for all years not practicing greater than three, while the inactive license route cost would increase by $100 per additional year, the reinstatement route would also be preferable for those optometrists who plan not to practice for more than three years.

For optometrists licensed without TPA certification, the inactive license may be preferable for those who plan not to practice for three years. Since the fee to reactivate this license is only $50, the total cost of having an inactive license for three years would only be $350, versus the $400 for the reinstatement route. On the other hand, the inactive route would have installment payments, while the reinstatement route does not.

The proposed inactive license would be beneficial for those optometrists who plan not to practice for less than three years, since the total cost would be less than under the reinstatement route. For example, the total cost of having an inactive license with TPA certification for two years, and then applying to reactivate the license would be $300 plus the time, fees and travel costs associated with obtaining 40 hours of CE. The total cost to just not renew the regular license, and then apply for reinstatement after two years would be $400 plus the time, fees and travel costs associated with obtaining 40 hours of CE.

Businesses and Entities Affected. The proposed amendments potentially affect the 1,656 persons who hold a Virginia optometrist license.

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

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect total 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 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. Costs would be moderately reduced for small optometry practices that pay for their optometrists licensing fees.

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[1]See http://townhall.virginia.gov/l/viewpetition.cfm?petitionid=264

[2]TPA is therapeutic pharmaceutical agents. TPA certification is authorization by the Board for an optometrist to treat diseases and abnormal conditions of the human eye and its adnexa and to prescribe and administer certain therapeutic pharmaceutical agents.

[3]A licensee who completes more than 20 hours of continuing education in a year is allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

[4]$100 fee for each of the three years that the license is inactive, plus $100 fee to reactivate the license. This calculation does not take account of the time value of money over the three years.

Agency's Response to Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget, relating to an inactive license. However, an inactive license is most often chosen by a person who does not intend to resume active practice but wants to retain the professional license he has always held. For those persons, allowing an active license to lapse is not an acceptable option; taking inactive status is preferable. Therefore, the cost comparison of inactive licensure versus reinstatement of a lapsed license is not relevant for the majority of licensees.

Summary:

The amendments enable the board to issue inactive licenses.

18VAC105-20-20. Fees.

A. Required fees.

Initial application and licensure (including TPA certification)	$250
Application for TPA certification	$200
Annual licensure renewal without TPA certification	$150
Annual licensure renewal with TPA certification	$200
Annual renewal of inactive license	$100
Late renewal without TPA certification	$50
Late renewal with TPA certification	$65
Late renewal of inactive license	$35
Returned check	$35
Professional designation application	$100
Annual professional designation renewal (per location)	$50
Late renewal of professional designation	$20
Reinstatement application fee (including renewal and late fees)	$400
Reinstatement application after disciplinary action	$500
Duplicate wall certificate	$25
Duplicate license	$10
Licensure verification	$10

B. Unless otherwise specified, all fees are nonrefundable.

C. From October 31, 2018, to December 31, 2018, the following fees shall be in effect:

Annual licensure renewal without TPA certification	$75
Annual licensure renewal with TPA certification	$100
Annual professional designation renewal (per location)	$25

18VAC105-20-61. Inactive licensure; reactivation.

A. An optometrist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain continuing education requirements and shall not

perform any act requiring a license to practice optometry in Virginia.

B. A licensee whose license has been inactive and who requests reactivation of an active license shall file an application, pay the difference between the inactive and active renewal fees for the current year, and provide documentation of having completed continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed 40 contact hours.

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal of an active license shall be conditioned upon submission of evidence to the board of 20 hours of continuing education taken by the applicant during the previous license period. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

1. The 20 hours may include up to two hours of recordkeeping for patient care, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products.

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 10 of the required continuing education hours shall be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures.

3. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.

4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).

5. Two hours of the 20 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to the renewal deadline unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to the renewal deadline each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection G of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board, which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor or accrediting body as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.

2. Regional optometric organizations.

3. State optometric associations and their affiliate local societies.

4. Accredited colleges and universities providing optometric or medical courses.

5. The American Academy of Optometry and its affiliate organizations.

6. The American Academy of Ophthalmology and its affiliate organizations.

7. The Virginia Academy of Optometry.

8. Council on Optometric Practitioner Education (COPE).

9. State or federal governmental agencies.

10. College of Optometrists in Vision Development.

11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.

12. Providers of training in cardiopulmonary resuscitation (CPR).

13. Optometric Extension Program.

H. In order to maintain approval for continuing education courses, providers or sponsors shall:

1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course and contact information of the provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.

2. Maintain documentation about the course and attendance for at least three years following its completion.

I. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.

VA.R. Doc. No. R18-13; Filed June 4, 2019, 3:48 p.m.

BOARD OF COUNSELING

Notice of Extension of Emergency Regulation

Title of Regulation: **18VAC115-70. Registration of Peer Recovery Specialists (adding 18VAC115-70-10 through 18VAC115-70-90).**

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Expiration Date Extended Through: December 16, 2019.

The Governor approved the request of the Board of Counseling to extend the expiration date of the emergency regulation for six months as provided by § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation will continue in effect through December 16, 2019. The emergency regulation relates to the registration of peer recovery specialists. The Board of Counseling adopted final replacement regulations on May 31, 2109; however, the regulations will not be effective before the original expiration date of the emergency regulations. Without an extension of emergency regulations, the board will be unable to register peer recovery specialists. Registration is a requirement for reimbursement by the Department of Medical Assistance Services, so a disruption in registration of peer recovery specialists would have an impact on substance abuse treatment in Virginia. The emergency regulation was published in 34:10 VA.R. 1081-1085 January 8, 2018.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R18-5240; Filed June 4, 2019, 1:57 p.m.

Notice of Extension of Emergency Regulation

Title of Regulation: **18VAC115-80. Registration of Qualified Mental Health Professionals (adding 18VAC115-80-10 through 18VAC115-80-110).**

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Expiration Date Extended Through: December 16, 2019.

The Governor approved the request of the Board of Counseling to extend the expiration date of the emergency regulation for six months as provided by § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation will continue in effect through December 16, 2019. The emergency regulation relates to the registration of qualified mental health professionals (QMHPs). The Board of Counseling adopted final replacement regulations on May 31, 2109; however, the regulations will not be effective before the original expiration date of the emergency regulations. Without an extension of emergency regulations, the board will be unable to register QMHPs. Registration is a requirement for reimbursement by the Department of Medical Assistance Services, so a disruption in registration of QMHPs would have an impact on mental health treatment in Virginia. The emergency regulation was published in 34:10 VA.R. 1085-1089 January 8, 2018.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R18-5242; Filed June 4, 2019, 1:57 p.m.

BOARD OF SOCIAL WORK

Fast-Track Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10, 18VAC140-20-50).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 24, 2019.

Effective Date: August 8, 2019.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA

23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@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 Social Work the authority to promulgate regulations to administer the regulatory system.

Purpose: The purpose of the regulatory change is greater access to supervisors for persons seeking licensure by making the qualification for supervisors less burdensome, which will facilitate the publication of a listing of persons who have been approved as supervisors. The reduction in required hours of continuing education and the elimination of continuing education in supervision every five years is not expected to decrease the quality of supervision. The additional hours of ethics currently proposed for all licensees in a separate regulatory action (from two to six hours every two years) will ensure that those providing supervision are adequately educated in issues relating to ethical practice and able to train supervisees in such practice to protect public health, safety, and welfare.

Rationale for Using Fast-Track Rulemaking Process: The impetus for this action was a question about the necessity of continuing education hours in supervision every five years, as some board members felt the subject matter was repetitive and not necessary. Additionally, the action will facilitate board publication of a list of approved supervisors, which is something applicants seeking supervision have been requesting.

Substance: In 18VAC140-10, the definition of "face-to-face" is amended to include interactions between a client and a supervisee in the context of the requirement in 18VAC140-50 that a supervised experience must include "a minimum of 1,380 hours of supervised experience in face-to-face client contact in the delivery of clinical social work services." By amending the definition to be inclusive of client contact, the board has clarified that the requirement may be met by the physical presence of the individuals or by the use of technology that provides real-time, visual contact among the individuals involved.

In 18VAC140-50 B, the requirements for supervisors are amended to reduce the hours of continuing education required to qualify for board approval from 14 hours to 12 hours and to eliminate the requirement that those hours must be within the five years immediately preceding registration for supervision.

Issues: The primary advantage to the public is the possibility of greater access to licensed clinical social workers by reducing the burden for becoming an approved supervisor to oversee the required clinical experience. There are no disadvantages to the public; supervisors (who are licensees) will have to have at least six hours of continuing education every two years in ethics and standards of practice affecting their profession. There are no advantages and 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 Social Work (Board) proposes amendments to: 1) clarify that the definition of "face-to-face" includes the contact a supervisee and a client must have, 2) reduce the number of hours of continuing education (CE) required to become an approved supervisor, 3) and eliminate the requirement that those hours must be repeated every five years to remain an approved supervisor.

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

Estimated Economic Impact. Among the requirements to become a licensed clinical social worker, applicants must complete a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services and in ancillary services that support such delivery. Supervisees must obtain throughout their hours of supervision a minimum of 1,380 hours of supervised experience in face-to-face client contact in the delivery of clinical social work services. The remaining hours may be spent in ancillary services supporting the delivery of clinical social work services.

The Board proposes to amend the definition "face-to-face" to clarify that the requirement may be met by the physical presence of the individuals or by the use of technology that provides real-time, visual contact among the individuals involved. To the extent that some supervisees did not know that the use of technology that provides real-time, visual contact would count toward this requirement, the clarification may reduce their burden in fulfilling the face-to-face client contact requirement.

"Supervision" is defined in the regulation as "professional relationship between a supervisor and supervisee in which the supervisor directs, monitors and evaluates the supervisee's social work practice while promoting development of the supervisee's knowledge, skills, and abilities to provide social work services in an ethical and competent manner." The current regulation requires that the supervisor has received professional training in supervision, consisting of a three credit-hour graduate course in supervision or at least 14 contact hours of CE offered by an approved provider. These hours can be part of the 30 contact hours of CE required for license renewal every two years.

The Board proposes that the required hours of CE that are dedicated to supervision training be reduced from 14 to 12. The Board believes that 12 hours are sufficient for competence, and are easier to obtain in a two-day conference. This would not reduce the total amount of CE required for license renewal, but would enable licensees to spend two

hours of training in coursework that they may find more useful and potentially less costly. Thus, this proposed amendment would likely produce a net benefit.

Additionally, the current regulation specifies that the graduate course or hours of continuing education in supervision be obtained by a supervisor within five years immediately preceding registration of supervision. Removal of this restriction would also likely enable supervisors to spend their CE time more productively without significantly affecting their competence as supervisors.

Businesses and Entities Affected. The proposed amendments affect the 2,039 registered clinical social worker supervisees and their supervisors.

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

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect total 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 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 amendments may moderately reduce costs for small firms that employee clinical social workers.

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[1]Adverse impact is indicated if there is any increase in net cost for any entity, even if the benefits exceed the costs for all entities combined.

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

Summary:

The amendments (i) clarify that the definition of "face-to-face" includes the contact a supervisee and a client must have, (ii) reduce the number of hours of continuing education required to become an approved supervisor, and (iii) eliminate the requirement that those hours must be repeated every five years to remain an approved supervisor.

Part I
General Provisions

18VAC140-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

Board

Casework

Casework management and supportive services

Clinical social worker

Practice of social work

Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Active practice" means post-licensure practice at the level of licensure for which an applicant is seeking licensure in Virginia and shall include at least 360 hours of practice in a 12-month period.

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Clinical course of study" means graduate course work that includes specialized advanced courses in human behavior and the social environment, social justice and policy, psychopathology, and diversity issues; research; clinical practice with individuals, families, and groups; and a clinical practicum that focuses on diagnostic, prevention, and treatment services.

"Clinical social work services" ~~include~~ means the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services, and treatment services, including psychosocial interventions, psychotherapy, and counseling for mental disorders, substance abuse, marriage and family

dysfunction, and problems caused by social and psychological stress or health impairment.

"Exempt practice" ~~is that which~~ means practice that meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face ~~supervision~~" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision or the physical presence of the supervisee and a client or the use of technology that provides real-time, visual contact among the individuals involved.

"Nonexempt practice" ~~is that which~~ means practice that does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Supervisee" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision.

"Supervision" means a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors, and evaluates the supervisee's social work practice while promoting development of the supervisee's knowledge, skills, and abilities to provide social work services in an ethical and competent manner.

18VAC140-20-50. Experience requirements for a licensed clinical social worker.

A. Supervised experience. Supervised post-master's degree experience without prior written board approval will not be accepted toward licensure, except supervision obtained in another United States jurisdiction may be accepted if it met the requirements of that jurisdiction.

1. Registration. An individual who proposes to obtain supervised post-master's degree experience in Virginia shall, prior to the onset of such supervision, or whenever there is an addition or change of supervised practice, supervisor, clinical social work services, or location:

a. Register on a form provided by the board and completed by the supervisor and the supervised individual; and

b. Pay the registration of supervision fee set forth in 18VAC140-20-30.

2. Hours. The applicant shall have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services and in ancillary services that support such delivery. A minimum of one hour and a maximum of four hours of face-to-face supervision shall be provided per 40 hours of work experience for a total of at least 100 hours. No more than 50 of the 100 hours may be obtained in group supervision, nor shall there be more than six persons being supervised in a group unless approved in advance by the board. The board may consider alternatives to face-to-face supervision if the applicant can demonstrate an undue burden due to hardship, disability, or geography.

a. Supervised experience shall be acquired in no less than two nor more than four consecutive years.

b. Supervisees shall obtain throughout their hours of supervision a minimum of 1,380 hours of supervised experience in face-to-face client contact in the delivery of clinical social work services. The remaining hours may be spent in ancillary services supporting the delivery of clinical social work services.

3. An individual who does not complete the supervision requirement after four consecutive years of supervised experience may request an extension of up to 12 months. The request for an extension shall include evidence that demonstrates extenuating circumstances that prevented completion of the supervised experience within four consecutive years.

B. Requirements for supervisors.

1. The supervisor shall hold an active, unrestricted license as a licensed clinical social worker in the jurisdiction in which the clinical services are being rendered with at least two years of post-licensure clinical social work experience. The board may consider supervisors with commensurate qualifications if the applicant can demonstrate an undue burden due to geography or disability or if supervision was obtained in another United States jurisdiction.

2. The supervisor shall have received professional training in supervision, consisting of a three credit-hour graduate course in supervision or at least ~~14~~ 12 hours of continuing education offered by a provider approved under 18VAC140-20-105. ~~The graduate course or hours of continuing education in supervision shall be obtained by a supervisor within five years immediately preceding registration of supervision.~~

3. The supervisor shall not provide supervision for a family member or provide supervision for anyone with whom he has a dual relationship.

4. The board may consider supervisors from jurisdictions outside of Virginia who provided clinical social work supervision if ~~they~~ the supervisors have commensurate qualifications but were either (i) not licensed because their jurisdiction did not require licensure or (ii) were not designated as clinical social workers because the jurisdiction did not require such designation.

C. Responsibilities of supervisors. The supervisor shall:

1. Be responsible for the social work activities of the supervisee as set forth in this subsection once the supervisory arrangement is accepted;

2. Review and approve the diagnostic assessment and treatment plan of a representative sample of the clients assigned to the ~~applicant~~ supervisee during the course of supervision. The sample should be representative of the variables of gender, age, diagnosis, length of treatment, and treatment method within the client population seen by the ~~applicant~~ supervisee. It is the ~~applicant's~~ supervisee's responsibility to assure the representativeness of the sample that is presented to the supervisor;

3. Provide supervision only for those social work activities for which the supervisor has determined the ~~applicant~~ supervisee is competent to provide to clients;

4. Provide supervision only for those activities for which the supervisor is qualified by education, training, and experience;

5. Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, understanding the requirements of law for reporting any harm or risk of harm to self or others, and implementing a professional and ethical relationship with clients;

6. Be available to the ~~applicant~~ supervisee on a regularly scheduled basis for supervision;

7. Maintain documentation, for five years post-supervision, of which clients were the subject of supervision; and

8. Ensure that the board is notified of any change in supervision or if supervision has ended or been terminated by the supervisor.

D. Responsibilities of supervisees.

1. Supervisees may not directly bill for services rendered or in any way represent themselves as independent, autonomous practitioners, or licensed clinical social workers.

2. During the supervised experience, supervisees shall use their names and the initials of their degree, and the title "Supervisee in Social Work" in all written communications.

3. Clients shall be informed in writing of the supervisee's status and the supervisor's name, professional address, and phone number.

4. Supervisees shall not supervise the provision of clinical social work services provided by another person.

VA.R. Doc. No. R19-5777; Filed June 4, 2019, 3:09 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10, 18VAC140-20-30, 18VAC140-20-37, 18VAC140-20-51, 18VAC140-20-60, 18VAC140-20-70, 18VAC140-20-105, 18VAC140-20-110, 18VAC140-20-150).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 24, 2019.

Effective Date: August 8, 2019.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@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 Social Work the authority to promulgate regulations to administer the regulatory system. Section 54.1-3705 of the Code of Virginia authorizes the board to license baccalaureate social workers (BSWs), master's social workers (MSWs), and clinical social workers to practice consistent with the requirements of the chapter and regulations.

Purpose: The regulatory action implements statutory changes made to the Code of Virginia identifying two levels of midlevel licensure. The requirements for licensure of BSWs and MSWs are not substantially different from the current requirements for a licensed social worker (LSW) license, but an MSW is required to take the master's level examination for evidence of competency to provide services to the public consistent with public health and safety.

Rationale for Using Fast-Track Rulemaking Process: The changes do not alter the basic requirements for licensure, including the fees charged to applicants or licensees. Those who are currently licensed as LSWs will be able to self-designate whether they are licensed baccalaureate social workers (LBSWs) or licensed master's social workers (LMSWs). The amendments conform regulations to 2018 legislation and should not be controversial.

Substance: Throughout the chapter, the term "licensed social worker" is replaced by the two categories of midlevel licensure, LBSW and LMSW. Education, experience, and examination requirements are specified in accordance with the level of a baccalaureate or master's degree.

Issues: The public may be better served by a clearer designation of the licensure type (whether the licensed social worker holds a baccalaureate or master's degree). There are no disadvantages to the public. The current category of licensed social worker is being divided into two midlevel

licenses. 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. Pursuant to Chapter 451 of the 2018 Acts of Assembly,[1] the Board of Social Work (Board) proposes to establish provisions relating to the division of the category of "licensed social worker" (LSW) into two licensure categories of "baccalaureate social worker" (BSW) and "master's social worker" (MSW).

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

Estimated Economic Impact:

Current Regulation. Under the current regulation, in order to become an LSW the candidate must hold a bachelor's or a master's degree from an accredited school of social work, and pass a licensing examination of the Association of Social Work Boards. The exam must be at least at the bachelor's level.

Applicants for LSW who hold a master's degree may apply for licensure as a licensed social worker without documentation of supervised experience. Applicants for LSW who hold only a bachelor's degree must complete a minimum of 3,000 hours of supervised post-bachelor's degree experience in casework management and supportive services under supervision satisfactory to the board.

Legislation. Chapter 451 created and defined "baccalaureate social worker" as "a person who engages in the practice of social work under the supervision of a master's social worker and provides basic generalist services, including casework management and supportive services and consultation and education." The legislation created and defined "master's social worker" as "a person who engages in the practice of social work and provides non-clinical, generalist services, including staff supervision and management."

Proposal. The Board proposes to require that licensed BSWs hold a bachelor's degree from an accredited school of social work. This is consistent with the current requirement for LSWs. The Board proposes to require that licensed MSWs hold a master's degree from an accredited school of social work. Obtaining a master's degree of course requires more time and expenditure than just obtaining a bachelor's degree. Given the name of the designation introduced by Chapter 451, and that the definition of MSW in the legislation includes provision of "staff supervision and management" while the legislation definition for BSW does not, it seems likely that the legislative intent was for MSWs to have a higher level of qualification than BSWs such as a master's degree versus the bachelor's degree.

Similarly, the Board proposes to require that licensed BSWs pass the bachelor's level Association of Social Work Boards examination and that licensed MSWs pass the master's level Association of Social Work Boards examination. The exam fee for both exams is $230.[2] Thus, the separate exam requirements for the two licensed designations does not affect costs and, as argued, likely is the legislative intent.

Businesses and Entities Affected. According to the Department of Health Professions (DHP), there are currently 763 LSWs; DHP estimates that 80% of LSWs will self-designate as MSWs (attest that they hold a master's degree). The Board licenses approximately 35 new LSWs each quarter. DHP believes that most licensed social workers are employed in institutions/hospitals/school systems/etc., which would not be considered small businesses.

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

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect total 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 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 amendments are unlikely to significantly affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed regulation amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?181+ful+CHAP0451+hil

[2]Source: Association of Social Work Boards website accessed on September 11, 2018: https://www.aswb.org/exam-candidates/exam-registration/

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

Summary:

Pursuant to Chapter 451 of the 2018 Acts of Assembly, the amendments divide the licensure category of "licensed social worker" into two new types of licensure, "baccalaureate social worker" and "master's social worker."

Part I
General Provisions

18VAC140-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

Baccalaureate social worker

Board

Casework

Casework management and supportive services

Clinical social worker

Master's social worker

Practice of social work

Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Active practice" means post-licensure practice at the level of licensure for which an applicant is seeking licensure in Virginia and shall include at least 360 hours of practice in a 12-month period.

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Clinical course of study" means graduate course work that includes specialized advanced courses in human behavior and the social environment, social justice and policy, psychopathology and diversity issues; research; clinical practice with individuals, families, and groups; and a clinical practicum that focuses on diagnostic, prevention and treatment services.

"Clinical social work services" ~~include~~ means the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services, and treatment services, including psychosocial interventions, psychotherapy, and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Exempt practice" ~~is that which~~ means practice that meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face supervision" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision or the use of technology that provides real-time, visual contact among the individuals involved.

"LBSW" means a licensed baccalaureate social worker.

"LMSW" means a licensed master's social worker.

"Nonexempt practice" ~~is that which~~ means practice that does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Supervisee" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision.

"Supervision" means a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors and evaluates the supervisee's social work practice while promoting development of the supervisee's knowledge, skills and abilities to provide social work services in an ethical and competent manner.

18VAC140-20-30. Fees.

A. The board has established fees for the following:

1. Registration of supervision	$50
2. Addition to or change in registration of supervision	$25
3. Application processing	
a. Licensed clinical social worker	$165
b. ~~Licensed social worker~~ LBSW	$115
c. LMSW	$115
4. Annual license renewal	
a. Registered social worker	$25
b. Associate social worker	$25
c. ~~Licensed social worker~~ LBSW	$65
d. LMSW	$65
~~d.~~ e. Licensed clinical social worker	$90

5. Penalty for late renewal	
a. Registered social worker	$10
b. Associate social worker	$10
c. ~~Licensed social worker~~ LBSW	$20
d. LMSW	$20
~~d.~~ e. Licensed clinical social worker	$30
6. Verification of license to another jurisdiction	$25
7. Additional or replacement licenses	$15
8. Additional or replacement wall certificates	$25
9. Returned check	$35
10. Reinstatement following disciplinary action	$500

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

C. Examination fees shall be paid directly to the examination service according to its requirements.

18VAC140-20-37. Licensure; general.

~~Licensed social workers~~ LBSWs and LMSWs may practice in exempt practice settings under appropriate supervision. In accordance with § 54.1-3700 of the Code of Virginia, an LBSW shall engage in the practice of social work under the supervision of a master's social worker. Only licensed clinical social workers may practice at the autonomous level.

18VAC140-20-51. Requirements for licensure by examination as ~~a licensed social worker~~ an LBSW or LMSW.

A. In order to be approved to sit for the board-approved examination ~~for a licensed social worker~~ as an LBSW or an LMSW, an applicant shall:

1. Meet the education requirements prescribed in 18VAC140-20-60 ~~A~~.

2. Submit a completed application to the board office to include:

a. The application fee prescribed in 18VAC140-20-30; and

b. Official ~~transcript or~~ transcripts submitted from the appropriate institutions of higher education.

B. In order to be licensed by examination as ~~a licensed social worker~~ an LBSW or an LMSW, an applicant shall:

1. Meet the ~~education and experience~~ requirements prescribed in 18VAC140-20-60; and

2. Submit, in addition to the application requirements of subsection A of this section, the following:

a. ~~Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-60 along with documentation of the supervisor's out-of-state license where applicable. An applicant whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;~~ ~~b.~~ Verification of a passing score on the board-approved national examination;

~~c.~~ b. Documentation of any other health or mental health licensure or certification, if applicable; and

~~d.~~ c. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).

3. ~~Provide evidence of passage of the examination prescribed in 18VAC140-20-70~~ For licensure as a LBSW, submit documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-60 along with documentation of the supervisor's out-of-state license where applicable. An applicant, whose former supervisor is deceased or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation, or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision.

18VAC140-20-60. Education and experience requirements for ~~a licensed social worker~~ an LBSW or LMSW.

A. Education. The applicant for licensure as an LBSW shall hold a bachelor's ~~or a master's~~ degree from an accredited school of social work. The applicant for licensure as an LMSW shall hold a master's degree from an accredited school of social work. Graduates of foreign institutions must establish the equivalency of their education to this requirement through the Foreign Equivalency Determination Service of the Council on Social Work Education.

B. Master's degree applicant. An applicant who holds a master's degree may apply for licensure as ~~a licensed social worker~~ an LMSW without documentation of supervised experience.

C. Supervised experience requirement for bachelor's degree applicants. Supervised experience without prior written board approval will not be accepted toward licensure, except supervision obtained in another United States jurisdiction may be accepted if it met the requirements of that jurisdiction.

1. Registration. Prior to the onset of supervision, an individual who proposes to obtain supervised experience in Virginia shall:

a. Register on a form provided by the board and completed by the supervisor and the supervised individual; and

b. Pay the registration of supervision fee set forth in 18VAC140-20-30.

2. Hours. Bachelor's degree applicants shall have completed a minimum of 3,000 hours of supervised post-bachelor's degree experience in casework management and supportive services under supervision satisfactory to the board. A minimum of one hour and a maximum of four hours of face-to-face supervision shall be provided per 40 hours of work experience for a total of at least 100 hours.

3. Supervised experience shall be acquired in no less than two nor more than four consecutive years from the beginning of the supervised experience. An individual who does not complete the supervision requirement after four consecutive years of supervised experience may request an extension of up to 12 months. The request for an extension shall include evidence that demonstrates extenuating circumstances that prevented completion of the supervised experience within four consecutive years.

D. Requirements for supervisors.

1. The supervisor providing supervision shall hold an active, unrestricted license as a licensed social worker with a master's degree, or a licensed social worker with a bachelor's degree and at least three years of post-licensure social work experience or a licensed clinical social worker in the jurisdiction in which the social work services are being rendered. If this requirement places an undue burden on the applicant due to geography or disability, the board may consider individuals with comparable qualifications.

2. The supervisor shall:

a. Be responsible for the social work practice of the prospective applicant once the supervisory arrangement is accepted by the board;

b. Review and approve the assessment and service plan of a representative sample of cases assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, assessment, length of service and casework method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor. The supervisor shall be available to the applicant on a regularly scheduled basis for supervision. The supervisor will maintain documentation, for five years post supervision, of which clients were the subject of supervision;

c. Provide supervision only for those casework management and support services activities for which the supervisor has determined the applicant is competent to provide to clients;

d. Provide supervision only for those activities for which the supervisor is qualified;

e. Evaluate the supervisee in the areas of professional ethics and professional competency; and

f. Ensure that the board is notified of any change in supervision or if the supervision has ended or has been terminated by the supervisor.

3. The supervisor shall not provide supervision for a family member or provide supervision for anyone with whom the supervisor has a dual relationship.

Part III
Examinations

18VAC140-20-70. Examination requirement.

A. An applicant for licensure by the board as ~~a social worker~~ an LBSW, an LMSW, or clinical social worker shall pass a written examination prescribed by the board.

1. The examination prescribed for licensure as a clinical social worker shall be the licensing examination of the Association of Social Work Boards at the clinical level.

2. The examination prescribed for licensure as ~~a social worker~~ an LBSW shall ~~minimally~~ be the licensing examination of the Association of Social Work Boards at the bachelor's level.

3. The examination prescribed for licensure as an LMSW shall be the licensing examination of the Association of Social Work Boards at the master's level.

B. An applicant approved by the board to sit for an examination shall take that examination within two years of the date of the initial board approval. If the applicant has not passed the examination by the end of the two-year period here prescribed, the applicant shall reapply according to the requirements of the regulations in effect at that time in order to be approved for another two years in which to pass the examination.

C. If an applicant for clinical social work licensure has not passed the examination within the second two-year approval period, the applicant shall be required to register for supervision and complete one additional year as a supervisee

before approval for another two-year period in which to re-take the examination may be granted.

18VAC140-20-105. Continued competency requirements for renewal of an active license.

A. Licensed clinical social workers shall be required to have completed a minimum of 30 contact hours of continuing education ~~and licensed social workers~~. LBSWs and LMSWs shall be required to have completed a minimum of 15 contact hours of continuing education prior to licensure renewal in even years. Courses or activities shall be directly related to the practice of social work or another behavioral health field. A minimum of two of those hours must pertain to ethics or the standards of practice for the behavioral health professions or to laws governing the practice of social work in Virginia. Up to two continuing education hours required for renewal may be satisfied through delivery of social work services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services, as verified by the department or clinic. Three hours of volunteer service is required for one hour of continuing education credit.

1. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

2. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters upon written request from the licensee prior to the renewal date.

B. Hours may be obtained from a combination of board-approved activities in the following two categories:

1. Category I. Formally Organized Learning Activities. A minimum of 20 hours for licensed clinical social workers or 10 hours for licensed social workers shall be documented in this category, which shall include one or more of the following:

a. Regionally accredited university or college academic courses in a behavioral health discipline. A maximum of 15 hours will be accepted for each academic course.

b. Continuing education programs offered by universities or colleges accredited by the Council on Social Work Education.

c. Workshops, seminars, conferences, or courses in the behavioral health field offered by federal, state or local social service agencies, public school systems or licensed health facilities and licensed hospitals.

d. Workshops, seminars, conferences or courses in the behavioral health field offered by an individual or organization that has been certified or approved by one of the following:

(1) The Child Welfare League of America and its state and local affiliates.

(2) The National Association of Social Workers and its state and local affiliates.

(3) The National Association of Black Social Workers and its state and local affiliates.

(4) The Family Service Association of America and its state and local affiliates.

(5) The Clinical Social Work Association and its state and local affiliates.

(6) The Association of Social Work Boards.

(7) Any state social work board.

2. Category II. Individual Professional Activities. A maximum of 10 of the required 30 hours for licensed clinical social workers or a maximum of five of the required 15 hours for licensed social workers may be earned in this category, which shall include one or more of the following:

a. Participation in an Association of Social Work Boards item writing workshop. (Activity will count for a maximum of two hours.)

b. Publication of a professional social work-related book or initial ~~preparation/presentation~~ preparation or presentation of a social work-related course. (Activity will count for a maximum of 10 hours.)

c. Publication of a professional social work-related article or chapter of a book, or initial ~~preparation/presentation~~ preparation or presentation of a social work-related in-service training, seminar, or workshop. (Activity will count for a maximum of five hours.)

d. Provision of a continuing education program sponsored or approved by an organization listed under Category I. (Activity will count for a maximum of two hours and will only be accepted one time for any specific program.)

e. Field instruction of graduate students in a Council on Social Work Education-accredited school. (Activity will count for a maximum of two hours.)

f. Serving as an officer or committee member of one of the national professional social work associations listed under subdivision B 1 d of this section or as a member of a state social work licensing board. (Activity will count for a maximum of two hours.)

g. Attendance at formal staffings at federal, state, or local social service agencies, public school systems, or licensed health facilities and licensed hospitals. (Activity will count for a maximum of five hours.)

h. Individual or group study including listening to audio tapes, viewing video tapes, reading, professional books or articles. (Activity will count for a maximum of five hours.)

18VAC140-20-110. Late renewal; reinstatement; reactivation.

A. ~~A social worker~~ An LBSW, LMSW, or clinical social worker whose license has expired may renew that license within one year after its expiration date by:

1. Providing evidence of having met all applicable continuing education requirements.

2. Paying the penalty for late renewal and the renewal fee as prescribed in 18VAC140-20-30.

B. ~~A social worker~~ An LBSW, LMSW, or clinical social worker who fails to renew the license after one year and who wishes to resume practice shall apply for reinstatement and pay the reinstatement fee, which shall consist of the application processing fee and the penalty fee for late renewal, as set forth in 18VAC140-20-30. An applicant for reinstatement shall also provide:

1. Documentation of having completed all applicable continued competency hours equal to the number of years the license has lapsed, not to exceed four years;

2. Documentation of any other health or mental health licensure or certification held in another United States jurisdiction, if applicable; and

3. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank.

C. In addition to requirements set forth in subsection B of this section, an applicant for reinstatement whose license has been lapsed for 10 or more years shall also provide evidence of competency to practice by documenting:

1. Active practice in another United States jurisdiction for at least 24 out of the past 60 months immediately preceding application;

2. Active practice in an exempt setting for at least 24 out of the past 60 months immediately preceding application; or

3. Practice as a supervisee under supervision for at least 360 hours in the 12 months immediately preceding reinstatement of licensure in Virginia. The supervised practice shall include a minimum of 60 hours of face-to-face direct client contact and nine hours of face-to-face supervision.

D. ~~A social worker~~ An LBSW, LMSW, or clinical social worker wishing to reactivate an inactive license shall submit the difference between the renewal fee for active licensure and the fee for inactive licensure renewal and document completion of continued competency hours equal to the number of years the license has been inactive, not to exceed four years. An applicant for reactivation who has been inactive for 10 or more years shall also provide evidence of competency to practice by documenting:

1. Active practice in another United States jurisdiction for at least 24 out of the past 60 months immediately preceding application;

2. Active practice in an exempt setting for at least 24 out of the past 60 months immediately preceding application; or

3. Practice as a supervisee under supervision for at least 360 hours in the 12 months immediately preceding reactivation of licensure in Virginia. The supervised practice shall include a minimum of 60 hours of face-to-face direct client contact and nine hours of face-to-face supervision.

Part V
Standards of Practice

18VAC140-20-150. Professional conduct.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by telephone or electronically, these standards shall apply to the practice of social work.

B. Persons licensed as ~~social workers~~ LBSWs, LMSWs, and clinical social workers shall:

1. Be able to justify all services rendered to or on behalf of clients as necessary for diagnostic or therapeutic purposes.

2. Provide for continuation of care when services must be interrupted or terminated.

3. Practice only within the competency areas for which they are qualified by education and experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of social work.

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services.

6. Ensure that clients are aware of fees and billing arrangements before rendering services.

7. Inform clients of potential risks and benefits of services and the limitations on confidentiality and ensure that

clients have provided informed written consent to treatment.

8. Keep confidential their therapeutic relationships with clients and disclose client records to others only with written consent of the client, with the following exceptions: (i) when the client is a danger to self or others; or (ii) as required by law.

9. When advertising their services to the public, ensure that such advertising is neither fraudulent nor misleading.

10. As treatment requires and with the written consent of the client, collaborate with other health or mental health providers concurrently providing services to the client.

11. Refrain from undertaking any activity in which one's personal problems are likely to lead to inadequate or harmful services.

12. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

C. In regard to client records, persons licensed by the board shall comply with provisions of § 32.1-127.1:03 of the Code of Virginia on health records privacy and shall:

1. Maintain written or electronic clinical records for each client to include identifying information and assessment that substantiates diagnosis and treatment plans. Each record shall include a diagnosis and treatment plan, progress notes for each case activity, information received from all collaborative contacts and the treatment implications of that information, and the termination process and summary.

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality.

3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative or as mandated by law.

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third-party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations.

5. Maintain client records for a minimum of six years or as otherwise required by law from the date of termination of the therapeutic relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for six years after attaining the age of majority or 10 years following termination, whichever comes later.

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

c. Records that have been transferred to another mental health professional or have been given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Not engage in a dual relationship with a client or a supervisee that could impair professional judgment or increase the risk of exploitation or harm to the client or supervisee. (Examples of such a relationship include~~, but are not limited to,~~ familial, social, financial, business, bartering, or a close personal relationship with a client or supervisee.) Social workers shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs.

2. Not have any type of romantic relationship or sexual intimacies with a client or those included in collateral therapeutic services, and not provide services to those persons with whom they have had a romantic or sexual relationship. Social workers shall not engage in romantic relationship or sexual intimacies with a former client within a minimum of five years after terminating the professional relationship. Social workers who engage in such a relationship after five years following termination shall have the responsibility to examine and document thoroughly that such a relationship did not have an exploitive nature, based on factors such as duration of therapy, amount of time since therapy, termination circumstances, client's personal history and mental status, adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a social worker does not change the nature of the conduct nor lift the regulatory prohibition.

3. Not engage in any romantic or sexual relationship or establish a therapeutic relationship with a current supervisee or student. Social workers shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student, or the potential for interference with the supervisor's professional judgment.

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

5. Not engage in a personal relationship with a former client in which there is a risk of exploitation or potential

harm or if the former client continues to relate to the social worker in his professional capacity.

E. Upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons licensed by the board shall advise their clients of their right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

VA.R. Doc. No. R19-5523; Filed June 4, 2019, 3:07 p.m.

EXECUTIVE ORDER NUMBER THIRTY-TWO (2019)

Establishment of the Commission to Examine Racial Inequity in Virginia Law

Importance of the Initiative

The Commonwealth of Virginia has a long and complex history, which includes a history of racial inequities and racially-discriminatory laws. The purpose of this Commission is to review the Virginia Acts of Assembly, Code of Virginia, and administrative regulations with the goal of identifying and making recommendations to address laws that were intended to or could have the effect of promoting or enabling racial discrimination or inequity. Such laws have no place in Virginia or its law books.

In the case of the Acts of Assembly, discriminatory laws have been enacted, and in some cases obviated by court rulings. Nonetheless, the words still remain in the Acts as all-but-hidden reminders of the initial malicious intent and the painful history that spawned the laws.

This Commission will work to identify the vestiges of inequity and inequality in Virginia's laws, laying the groundwork for the redefining of the Commonwealth in the 21st century as a state committed to the success and equitable treatment of every citizen.

Establishment of the Commission to Examine Racial Inequity in Virginia Law

Accordingly, by virtue of the authority vested in me as Governor, under Article V of the Constitution of Virginia and §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Commission to Examine Racial Inequity in Virginia Law (Commission). The Commission will identify laws in Virginia that have the effect or could have the effect of enabling or promoting racial inequity or inequality.

Composition and Support of the Commission

The Commission's members and chair(s) will be appointed by the Governor. The Governor will select experts, scholars, and community leaders with knowledge of and/or experience in civil rights, race and equity, and the law. The Governor may appoint other members at any time to carry out the assigned functions of the Commission. The Commission will have an advisory role and the members will serve without compensation, in accordance with § 2.2- 2100 of the Code of Virginia. In carrying out its duties, the Commission may appoint working groups as it deems appropriate, and may solicit participation from relevant subject matter experts, practitioners and historical analysts.

Staff support for the Commission will be provided by the Office of the Governor and any other agencies or offices as may be designated by the Governor. An estimated 250 hours of staff time will be required to support the work of the Commission.

Duties of the Commission

The Commission will meet upon the call of the chair(s) and will issue an interim report with its findings and recommendations no later than November 15, 2019, and any additional reports and recommendations as necessary or as requested by the Governor. This report may also include a proposed framework for the continuation of the Commission's work. The Commission's findings and recommendations will be distributed to promote best practices across the Commonwealth.

Effective Date of the Executive Order

This Executive Order shall be effective upon signing and shall remain in full force and effect for a year from its signing, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this fourth day of June, 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.

BOARD FOR BARBERS AND COSMETOLOGY

Title of Document: Master Barber Endorsement Eligibility.

Public Comment Deadline: July 24, 2019.

Effective Date: July 25, 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.

BOARD OF COUNSELING

Titles of Documents:

Virginia Board of Counseling Bylaws.

Credential Appeals Frequently Asked Questions.

Possible Disciplinary or Alternative Actions for Noncompliance with Continuing Education.

Public Comment Deadline: July 24, 2019.

Effective Date: July 25, 2019.

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

DEPARTMENT OF MOTOR VEHICLES

Titles of Documents:

Motor Carrier Guidelines.

Motor Carrier Manual.

Public Comment Deadline: July 24, 2019.

Effective Date: July 25, 2019.

Agency Contact: Melissa K. Velazquez, Senior Policy Analyst, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-1844, or email melissa.velazquez@dmv.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Title of Document: Temporary Assistance for Needy Families Manual.

Public Comment Deadline: July 24, 2019.

Effective Date: July 25, 2019.

Agency Contact: Vanea Preston, Assistant Director, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7184, or email vanea.preston@dss.virginia.gov.

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Title of Document: Child and Family Services Manual E. Foster Care.

Public Comment Deadline: July 24, 2019.

Effective Date: July 25, 2019.

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

DEPARTMENT OF TAXATION

Title of Document: Certified Company Apportionment Guidelines for Business Conducted in Certain Disadvantaged Localities.

Public Comment Deadline: July 24, 2019.

Effective Date: July 25, 2019.

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

STATE AIR POLLUTION CONTROL 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 **9VAC5-10, General Definitions**. 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 24, 2019, and ends July 15, 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 Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

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.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

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 Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects 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).

18VAC10-11, Public Participation Guidelines

18VAC10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects 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 24, 2019, and ends July 15, 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 Kathleen R. Nosbisch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email apelscidla@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.

BOARD FOR BARBERS AND COSMETOLOGY

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 Board for Barbers and Cosmetology 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).

18VAC41-11, Public Participation Guidelines

18VAC41-20, Barbering and Cosmetology Regulations

18VAC41-50, Tattooing Regulations

18VAC41-60, Body-Piercing Regulations

18VAC41-70, Esthetics 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 24, 2019, and ends July 15, 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 Stephen Kirschner, Regulatory Operations Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@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.

CEMETERY 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 Cemetery Board 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).

18VAC47-11, Public Participation Guidelines

18VAC47-20, Cemetery Board Rules and 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 24, 2019, and ends July 15, 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 Christine Martine, Executive Director, Cemetery Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email cemetery@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.

FAIR HOUSING 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 Fair Housing Board 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).

18VAC62-10, Public Participation Guidelines

18VAC62-20, Fair Housing Certification 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 24, 2019, and ends July 15, 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 Christine Martine, Executive Director, Fair Housing Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email fairhousing@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.

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

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 Board for Hearing Aid Specialists and Opticians 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).

18VAC80-11, Public Participation Guidelines

18VAC80-20, Hearing Aid Specialists Regulations

18VAC80-30, Opticians 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 24, 2019, and ends July 15, 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 Stephen Kirschner, Regulatory Operations Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email hearingaidspec@dpor.virginia.

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.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

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

2019 Reimbursement Changes

Public Comment Period: May 31, 2019, through June 30, 2019

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates – Inpatient Hospital Services (12VAC30-70) and Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80).

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

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Ms. Jones and such comments are available for review at the same address. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall at https://townhall.virginia.gov/L/generalnotice.cfm.

Methods and Standards for Establishing Payment Rates – Inpatient Hospital Care (12VAC30-70):

1. The state plan is being revised to increase reimbursement for critical access hospitals by using an adjustment factor or percent of cost reimbursement of 100% for inpatient operating and capital rates and outpatient rates, effective July 1, 2019.

The expected increase in annual aggregate expenditures is $4,737,031 in fiscal year 2020.

2. The state plan is being revised to fund supplemental payments for the second and third years of graduate medical education for 13 funded slots for residents who began their residencies in July 2018, and the first year of graduate medical education of 20 funded slots for residencies in July 2019, and two one-year post graduate fellowships in July 2019.

The expected increase in annual aggregate expenditures is $4,600,000 in fiscal year 2020.

3. The state plan is being revised to clarify payment rules for new nursing homes or renovations that qualify for mid-year rate adjustments, effective July 1, 2019, to include the following:

a. For any facility whose fair rental value report has less than 12 months of experience, the department shall develop an occupancy schedule that represents average statewide occupancy by month of operation for use in calculating the per diem rate in lieu of a minimum occupancy requirement or actual occupancy.

b. Any new beds or renovations placed in service between the reporting year and the rate year shall be treated as a mid-year rate adjustment. No new rate will be made after April 30. Rate updates that fall between May 1 and June 30 shall be effective July 1 of the same year.

c. The department shall annualize real estate taxes, property taxes, and property insurance costs that do not represent a full year's cost.

d. Costs shall be based on currently available documentation at the time but are subject to audit. The department may use any reasonable method to estimate costs for which there is inadequate documentation. Any adjustments based on subsequent documentation or audit for a current rate year shall be applied beginning with the next rate year.

e. The department shall have 15 days from the date of the provider's submission to determine if the filing is complete for purposes of setting a rate for a new or renovated facility. The facility shall have 15 days from the date the filing is deemed incomplete to submit the required information. The deadline for setting the rate shall be extended for 30 days after the filing is deemed complete.

f. Providers may propose a phased renovation subject to approval by the department. The phased renovation may include reductions to available beds. Any modifications to the proposed renovation are also subject to approval by the department.

There is no expected increase or decrease in annual aggregate expenditures in fiscal year 2020.

Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80):

1. The state plan is being revised, effective July 1, 2019, to increase the practitioner rates for adult primary care services by 5.0% and rates for emergency department services by 1.0% to reflect the equivalent of 70% of the 2018 Medicare rates.

The expected increase in annual aggregate expenditures is $15,245,693 in fiscal year 2020.

2. The state plan is being revised, effective July 1, 2019, to create a separate service category for psychiatric services and to increase practitioner rates for psychiatric services by 21% to reflect the equivalent of 100% of the 2018 Medicare rates.

The expected increase in annual aggregate expenditures is $7,206,457 in fiscal year 2020.

3. The state plan is being revised, effective July 1, 2019, to increase the telehealth originating site facility fee to 100% of the Medicare rate and to reflect changes annually based on any changes in the Medicare rate. DMAS shall exempt federally qualified health centers and rural health centers from this reimbursement change.

The expected increase in annual aggregate expenditures is $50,744 in fiscal year 2020.

4. The state plan is being revised, effective July 1, 2019, to modify reimbursement for hospice services provided to patients residing in facilities to include at least 100% of the relevant Medicaid facility rate for that individual.

The expected increase in annual aggregate expenditures is $894,440 in fiscal year 2020.

5. The state plan is being revised, effective July 1, 2019, to increase the rates for personal care in Early Periodic Screening, Diagnosis, and Treatment (EPSDT) Program by 2.0%.

The expected increase in annual aggregate expenditures is $9,933,601 in fiscal year 2020.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

STATE WATER CONTROL BOARD

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 **9VAC25-390, Water Resources Policy**. 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 24, 2019, and ends July 15, 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.

Proposed Consent Order for AIG Employee Services Inc.

An enforcement action has been proposed for AIG Employee Services Inc. for violations of the State Water Control Law at the Parkridge V commercial office building facility located in Fairfax County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Jim Datko will accept comments by email at james.datko@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from June 25, 2019, through July 25, 2019.

Proposed Consent Order for Du Pont Teijin Films U.S. Limited Partnership

The State Water Control Board has proposed an enforcement action for Du Pont Teijin Films U.S. Limited Partnership for their Hopewell facility located at 3600 Discovery Drive, Chesterfield, Virginia. The board proposes to issue a consent order to address noncompliance with State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, from June 24, 2019, to July 25, 2019.

Proposed Consent Order for Eagle on 3 LLC

An enforcement action has been proposed for Eagle on 3 LLC for violations in Pittsylvania County, Virginia. The State Water Control Board proposes to issue a special order by consent to Eagle on 3 LLC to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Kristen Sadtler will accept comments by email at kristen.sadtler@deq.virginia.gov or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from June 24, 2019, to July 24, 2019.

Proposed Consent Order for Glenwood MHC LLC

An enforcement action has been proposed for Glenwood MHC LLC for violations of the State Water Control Law and regulations at the Glenwood MHC LLC wastewater treatment plant located in Spotsylvania County, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Glenwood MHC LLC wastewater treatment plant. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from June 25, 2019, through July 25, 2019.

Proposed Consent Order for Par 3 Development Group LLC

An enforcement action has been proposed for Par 3 Development Group LLC for violations in Charlotte, Halifax, Henry, Prince George, King and Queen, and Louisa Counties, Virginia. The State Water Control Board proposes to issue a special order by consent to Par 3 Development Group LLC to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Kristen Sadtler will accept comments by email at kristen.sadtler@deq.virginia.gov or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from June 24, 2019, to July 24, 2019.

Proposed Consent Order for Par 5 Development Group LLC

An enforcement action has been proposed for Par 5 Development Group LLC for violations in Charlotte and Buckingham Counties, Virginia. The State Water Control Board proposes to issue a special order by consent to Par 5 Development Group LLC to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Kristen Sadtler will accept comments by email at kristen.sadtler@deq.virginia.gov or postal mail at Department of Environmental Quality, Central Office, P.O.

Box 1105, Richmond, VA 23218, from June 24, 2019, to July 24, 2019.

Proposed Consent Order for PM Properties Inc.

An enforcement action has been proposed for PM Properties Inc. for violations at a facility in Rockbridge County, Virginia. The State Water Control Board proposes to issue a consent order to PM Properties Inc. to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Tamara Ambler will accept comments by email at tamara.ambler@deq.virginia.gov, FAX at (540) 574-7878), or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, from June 24, 2019, to July 25, 2019.

Proposed Consent Order for Rhetson Companies Inc.

An enforcement action has been proposed for Rhetson Companies Inc. for violations in Charlotte, Pittsylvania, and Halifax Counties, Virginia. The State Water Control Board proposes to issue a special order by consent to Rhetson Companies Inc. to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Kristen Sadtler will accept comments by email at kristen.sadtler@deq.virginia.gov, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from June 24, 2019, to July 24, 2019.

Proposed Consent Order for Scott-II Solar LLC

The State Water Control Board has proposed an enforcement action for Scott-II Solar LLC for the property (ID#038-28) located in Powhatan County, Virginia. The board proposes to issue a consent order to address noncompliance with State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, from June 24, 2019, to July 25, 2019.

Public Meeting and Opportunity for Public Comment for a TMDL Implementation Plan for the Mattaponi River Watershed in Caroline, King and Queen, King William, Orange, and Spotsylvania Counties

Public meeting: A public meeting to present a draft total maximum daily load (TMDL) implementation plan (IP) will be held on Wednesday, July 10, 2019, from 4:30 p.m. until 6:30 p.m. in the Bowling Green Town Hall, 117 Butler Street, Bowling Green, VA 22427. The IP contains implementation strategies to address excess bacteria in local area streams.

Purpose of notice: The Department of Environmental Quality (DEQ) will present and discuss with community members a draft TMDL IP for the Mattaponi River Watershed. The plan explains the pollutant reductions needed to meet the targets contained in a 2016 TMDL report prepared for the watershed. The IP report recommends a specific set of voluntary best management practices (BMPs) for agricultural lands, residential septic systems, and developed lands to reduce bacteria entering area streams. There will be a 30-day public comment period for interested stakeholders to comment on the draft plan. Written comments will be accepted from July 11, 2019, to August 12, 2019. Directions for how to submit a comment are listed at the end of this notice. Throughout the 30-day public comment period, the draft IP and all related materials can be found under "Mattaponi River TMDL Implementation Plan" at https://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx.

Description of study: Portions of Brock Run, Chapel Creek, Doctors Creek, Glady Run, Maracossic Creek, Mat River, Matta River, Mattaponi River, Motto River, Po River, Polecat Creek, Poni River, Reedy Creek, and Root Swamp do not meet their "recreational use" water quality standards. Accordingly, these streams are listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of Virginia's recreational use water quality standards, from excess levels of E. coli bacteria. The recommended set of management practices included in the TMDL IP are designed to reduce bacteria levels by the amount needed to allow attainment of the water quality standard. The IP satisfies a requirement of Virginia's 1997 Water Quality Monitoring, Information, and Restoration Act (§§ 62.1-44.19:4 through 62.1-44.19:8 of the Code of Virginia).

How to comment and participate: This meeting is open to the public and all interested parties are welcome. A public comment period on the TMDL IP will begin on July 11, 2019, and end August 12, 2019. All comments must be written and submitted via postal mail or email by 11:59 p.m. on August 12, 2019. Comments must include the name, address, and telephone number of the person submitting the comments. To submit written comments or for more information, contact David Evans, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3835, or email david.evans@deq.virginia.gov.

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.