VIRGINIA REGISTER OF REGULATIONS

VOL. 35 ISS. 23 PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION JULY 8, 2019

TABLE OF CONTENTS

Register Information Page 2645

Publication Schedule and Deadlines 2646

Petitions for Rulemaking 2647

Notices of Intended Regulatory Action 2648

Regulations 2650

1VAC30-45. Certification for Noncommercial Environmental Laboratories (Proposed) 2650
1VAC30-46. Accreditation for Commercial Environmental Laboratories (Proposed) 2650
2VAC5-317. Regulations for the Enforcement of the Noxious Weeds Law (Proposed) 2656
2VAC5-320. Regulations for the Enforcement of the Endangered Plant and Insect Species Act (Proposed) 2659
4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (Final) 2661
4VAC15-40. Game: In General (Final) 2662
4VAC15-50. Game: Bear (Final) 2665
4VAC15-290. Game: Permits (Final) 2673
4VAC15-400. Watercraft: Accident and Casualty Reporting (Final) 2674
4VAC20-270. Pertaining to Crabbing (Final) 2675
4VAC20-670. Pertaining to Recreational Gear Licenses (Final) 2676
4VAC20-1040. Pertaining to Crabbing Licenses (Final) 2677
4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (Final) 2678
6VAC35-101. Regulation Governing Juvenile Secure Detention Centers (Fast-Track) 2678
9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities (Forms) 2682
12VAC5-110. Regulations for the Immunization of School Children (Final) 2682
13VAC5-112. Enterprise Zone Grant Program Regulation (Final) 2683
14VAC5-235. Rules Governing Health Insurance Balance Billing (Proposed) 2692
18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (Proposed) 2694
18VAC60-21. Regulations Governing the Practice of Dentistry (Forms) 2727
18VAC60-25. Regulations Governing the Practice of Dental Hygiene (Forms) 2727
18VAC60-30. Regulations Governing the Practice of Dental Assistants (Forms) 2727
18VAC76-20. Regulations Governing the Prescription Monitoring Program (Forms) 2729
18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (Final) 2730
18VAC85-50. Regulations Governing the Practice of Physician Assistants (Final) 2730
18VAC85-50. Regulations Governing the Practice of Physician Assistants (Fast-Track) 2731
18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (Final) 2733
18VAC105-20. Regulations Governing the Practice of Optometry (Forms) 2734
18VAC110-20. Regulations Governing the Practice of Pharmacy (Fast-Track) 2734
18VAC110-60. Regulations Governing Pharmaceutical Processors (Final) 2736
18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (Forms) 2756

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for $263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

Table of Contents

22VAC40-730. Investigation of Child Abuse and Neglect in Out of Family Complaints (Fast-Track) 2757
22VAC45-20. Regulations to Govern the Operation of Vending Facilities in Public Buildings and Other Property (Fast-Track) 2762
Guidance Documents 2766
General Notices/Errata 2767

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; Nicole Cheuk; Rita Davis; Leslie L. Lilley; 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).

August 2019 through August 2020

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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 MEDICINE

Agency Decision

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.**

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

Name of Petitioner: Dr. Luke Vetti.

Nature of Petitioner's Request: To include the American Board of Podiatric Medicine in regulations for endorsement and informed consent for podiatrists.

Agency Decision: Request granted.

Statement of Reason for Decision: At its meeting on June 13, 2019, the board decided to initiate the rulemaking by amending 18VAC85-20-141 and 18VAC85-20-350 using a fast-track rulemaking action.

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. R19-30; Filed June 13, 2019, 2:46 p.m.

BOARD OF NURSING

Agency Decision

Title of Regulation: **18VAC90-19. Regulations Governing the Practice of Nursing.**

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

Name of Petitioner: Linda Thurby-Hay.

Nature of Petitioner's Request: To revise all regulations relating to the registration and practice of clinical nurse specialists.

Agency Decision: Request granted.

Statement of Reason for Decision: The Board of Nursing considered the request at its meeting on May 21, 2019, and decided to initiate rulemaking. Working with the draft of proposed regulations submitted with the petition, the board will issue a Notice of Intended Regulatory Action for those amendments that are consistent with provisions of the Code of Virginia.

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. R19-28; Filed June 7, 2019, 9:14 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending **18VAC65-40, Regulations for the Funeral Service Internship Program**. The purpose of the proposed action is to (i) require training to be completed within not less than 18 months nor more than 60 months, and that the board only consider extensions for extenuating circumstances; (ii) require supervisors to register for supervision of each funeral service intern, with an expiration for the registration after 60 months or at the completion of the intern's training, whichever occurs first, in order to allow the board to track active supervisors and make sure supervisors are in good standing; and (iii) add a requirement that interns be identified to the public as interns in titles, correspondence, and communications with the public. Amendments for clarifications and to reduce the number of internship hours currently required also may be considered.

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

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

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

Public Comment Deadline: August 7, 2019.

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

VA.R. Doc. No. R19-6053; Filed June 14, 2019, 12:38 p.m.

BOARD OF COUNSELING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Counseling intends to consider amending **18VAC115-20, Regulations Governing the Practice of Professional Counseling**, **18VAC115-30, Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants**, **18VAC115-50, Regulations Governing the Practice of Marriage and Family Therapy**, and **18VAC115-60, Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners**. The purpose of the proposed action is to (i) specify in the regulations that the standard of practice requiring persons licensed, certified, or registered by the board to "Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare" precludes the provision of conversion therapy and (ii) define what comprises conversion therapy and what does not. The goal is to align regulations of the board with the stated policy and ethics for the profession of counseling.

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

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

Public Comment Deadline: August 7, 2019.

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. R19-5842; Filed June 14, 2019, 12:37 p.m.

BOARD OF PSYCHOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Psychology intends to consider amending **18VAC125-20, Regulations Governing the Practice of Psychology**. The purpose of the proposed action is to align regulations of the board with stated policy and ethics for the profession by (i) specifying in 18VAC125-20-150 that the standard of practice requiring licensed psychologists to "avoid harming patients or clients, research participants, students and others for whom they provide professional services and minimize harm when it is foreseeable and unavoidable," precludes conversion therapy and (ii) defining what comprises conversion therapy and what does not.

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

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

Public Comment Deadline: August 7, 2019.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R19-5824; Filed June 14, 2019, 12:43 p.m.

BOARD OF SOCIAL WORK

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Social Work intends to consider amending **18VAC140-20, Regulations Governing the Practice of Social Work**. The purpose of the proposed action is to (i) specify in the regulation that the requirement that a person licensed or registered by the board not conduct "one's practice in such a manner so as to make the practice a danger to the health and welfare of one's clients or to the public" precludes the provision of conversion therapy and (ii) define what comprises conversion therapy and what does not. The goal is to align regulations of the board with the stated policy and ethics for the profession of social work.

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

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

Public Comment Deadline: August 7, 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.

VA.R. Doc. No. R19-5872; Filed June 14, 2019, 12:43 p.m.

TITLE 1. ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES

Proposed Regulation

REGISTRAR'S NOTICE: The Department of General Services is claiming an exemption pursuant to Item 74 C 3 a of Chapter 854 of the 2019 Acts of Assembly, the Appropriation Act, which provides that a revision to certain fees is exempt from the requirements of the Administrative Process Act provided that the department provides notice and opportunity to submit written comments on the revised fees.

Titles of Regulations: **1VAC30-45. Certification for Noncommercial Environmental Laboratories (amending 1VAC30-45-130).**

1VAC30-46. Accreditation for Commercial Environmental Laboratories (amending 1VAC30-46-150).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 8, 2019.

Agency Contact: Rhonda Bishton, Director's Executive Administrative Assistant, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.virginia.gov.

Background: The Division of Consolidated Laboratory Services (DCLS) is seeking comment on the revision to fees charged for certifying laboratories under 1VAC30-45 and accrediting environmental laboratories under 1VAC30-46. Section 2.2-1105 C of the Code of Virginia, the law authorizing these programs, requires DCLS to establish a fee system to offset the programs costs. The current fees are inadequate to offset costs and must be revised. The proposed increase is only the second one since the regulations first became effective in 2009.

The current fees were developed based on a mid-2013 analysis of the financial costs of the programs. Although proposed by DCLS in August 2013, the fees were not effective for 1VAC30-46 until November 1, 2015, and for 1VAC30-45 until September 1, 2016, after completion of executive branch review and other requirements of the Administrative Process Act (Chapter 40 of Title 2.2 of the Code of Virginia). By the effective date of the regulations, the fees were already somewhat inadequate in offsetting program costs.

During the intervening six years since the current fees were developed in 2013, the cost of living has increased. As an indication of how costs have changed, the Consumer Price Index Inflation Calculator indicates the cost of living has increased 10% since January 2013, which is reflected in the increased cost of both labor and nonlabor items for the operation of the programs.

The current staffing needs and number of accredited laboratories for the programs are reflected in the revised fees. The revised fees also include the statewide salary adjustments for Fiscal Year 2020.

Summary:

The proposed amendments increase fees related to certification for noncommercial environmental laboratories and accreditation for commercial environmental laboratories.

1VAC30-45-130. Fees.

A. General.

1. Environmental laboratories shall pay a fee with all applications, including reapplications, for certification. DCLS shall not designate an application as complete until it receives payment of the fee.

2. Each certified environmental laboratory shall pay an annual fee to maintain its certification. DCLS shall send an invoice to the certified environmental laboratory.

3. Fees shall be nonrefundable.

B. Environmental laboratories performing only simple test procedures shall pay an annual fee of ~~$600~~ $690.

C. Fee computation for general environmental laboratories.

1. Fees shall be applied on an annual basis.

2. Environmental laboratories shall pay the total of the base fee and the test category fees set out in subsections D and E of this section.

D. Base fees for general environmental laboratories.

1. DCLS determines the base fee for a laboratory by taking into account both the total number of methods and the total number of field of certification matrices for which the laboratory would be certified.

2. DCLS shall charge the base fees set out in Table 1. The base fee for a laboratory is located by first finding the row for the total number of methods to be certified and then finding the box on that row located in the column headed by the total number of matrices to be certified. For example, DCLS charges a base fee of ~~$1300~~ $1495 to a laboratory performing a total of eight methods for one matrix.

TABLE 1: BASE FEES		
Number of Methods	1 Matrix	2 Matrices
1 - 9	~~$1300~~ $1495	~~$1430~~ $1645
10 - 29	~~$1400~~ $1610	~~$1575~~ $1811
30 - 99	~~$1550~~ $1783	~~$1825~~ $2099

E. Test category fees for general environmental laboratories.

1. The test category fees cover the types of testing for which a laboratory may be certified as specified in the laboratory's application or as certified at the time of annual billing.

2. Fees shall be charged for each category of tests to be certified.

3. Fees shall be charged for the total number of field of certification matrices to be certified under the specific test category. For example, if a laboratory is performing inorganic chemistry for both nonpotable water and solid and chemical materials matrices, the fee for this test category would be found in the column for two matrices.

4. The fee for each category includes one or more analytical methods unless otherwise specified.

5. DCLS shall charge the test category fees set out in Table 2. The test category fees for a laboratory are located by first finding the row with the total number of test methods for the test category to be certified. The fee to be charged for the test category will be found on that row in the column headed by the total number of matrices to be certified. A laboratory performing four test methods for inorganic chemistry in nonpotable water and solid and chemical materials (two matrices) would be charged a test category fee of ~~$375~~ $431.

6. Noncommercial environmental laboratories that perform toxicity, radiochemical, or asbestos testing shall pay the test category fees established for these types of testing in 1VAC30-46-150.

TABLE 2: TEST CATEGORY FEES		
Test Category	Fees by Number of Matrices	
	One	Two
Oxygen demand	~~$225~~ $259	~~$335~~ $385
Bacteriology, 1 - 3 total methods	~~$175~~ $201	~~$265~~ $305
Bacteriology, 4 or more total methods	~~$220~~ $253	~~$330~~ $380
Physical, 1 - 5 total methods	~~$175~~ $201	~~$265~~ $305
Physical, 6 - 10 total methods	~~$220~~ $253	~~$330~~ $380
Inorganic chemistry, 1 - 10 total methods	~~$250~~ $288	~~$375~~ $431
Inorganic chemistry, 11 - 20 total methods	~~$315~~ $362	~~$475~~ $546
Inorganic chemistry, 21 - 49 total methods	~~$394~~ $453	~~$590~~ $679
Chemistry metals, 1 - 5 total methods	~~$325~~ $374	~~$490~~ $564
Chemistry metals, 6 - 20 total methods	~~$410~~ $472	~~$615~~ $707
Organic chemistry, 1 - 5 total methods	~~$400~~ $460	~~$600~~ $690
Organic chemistry, 6 - 20 total methods	~~$500~~ $575	~~$750~~ $863

7. Fee examples. Three examples are provided.

a. Example 1:

Base Fee	One matrix and four test methods	~~$1300~~ $1495
Test Category Fees		
One Matrix		
Nonpotable Water	Bacteriology (2 methods)	~~$175~~ $201
Nonpotable Water	Oxygen demand (1 method)	~~$225~~ $259

Nonpotable Water	Physical (1)	~~$175~~ $201
TOTAL		~~$1875~~ $2156

b. Example 2:

Base Fee	One matrix and 15 test methods	~~$1400~~ $1610
Test Category Fees		
One Matrix		
Nonpotable Water	Bacteriology (2 methods)	~~$175~~ $201
Nonpotable Water	Inorganic chemistry (9 methods)	~~$250~~ $288
Nonpotable Water	Chemistry metals (2 methods)	~~$325~~ $374
Nonpotable Water	Oxygen demand (1 method)	~~$225~~ $259
Nonpotable Water	Physical (1)	~~$175~~ $201
TOTAL		~~$2550~~ $2933

c. Example 3:

Base Fee	Two matrices and 27 test methods	~~$1575~~ $1811
Test Category Fees		
One Matrix		
Nonpotable Water	Bacteriology (4 methods)	~~$220~~ $253
Nonpotable Water	Oxygen demand (1 method)	~~$225~~ $259
Solid and Chemical Materials	Chemistry metals (1 method)	~~$325~~ $374
Two Matrices		
Nonpotable Water and Solid and Chemical Materials	Inorganic chemistry (13 methods)	~~$475~~ $546
Nonpotable Water and Solid and Chemical Materials	Physical (7 methods)	~~$330~~ $380
TOTAL		~~$3150~~ $3623

F. Additional fees. Additional fees shall be charged to laboratories applying for the following: (i) modification to scope of certification under 1VAC30-45-90 B, (ii) transfer of ownership under 1VAC30-45-90 C, (iii) exemption under 1VAC30-45-120, or (iv) petition for a variance under 1VAC30-45-140.

1. For any certified environmental laboratory that applies to modify its scope of certification as specified under 1VAC30-45-90 B, DCLS shall assess a fee determined by the method in subsection G of this section.

2. Under 1VAC30-45-90 C, DCLS may charge a transfer fee to a certified laboratory that transfers ownership. A fee shall be charged if DCLS (i) needs to review documentation sent by the laboratory about the transfer of ownership or (ii) determines that an on-site assessment is necessary to evaluate the effect of the transfer of ownership. DCLS shall assess a fee determined by the method in subsection G of this section. If, under 1VAC30-45-90 C, DCLS determines that the change of ownership or location of laboratory requires recertification of or reapplication by the laboratory, the laboratory shall pay the application fees required under this section.

3. General environmental laboratories applying for an exemption under 1VAC30-45-120 shall pay an initial application fee of $700 plus an additional fee based on the actual time needed for DCLS to assess the exemption request. The total fee shall not exceed the actual time DCLS takes to assess the exemption request. Laboratories performing only simple test procedures applying for an exemption under 1VAC30-45-120 shall pay an initial application fee of $300 plus an additional fee based on the actual time needed for DCLS to assess the exemption request. The total fee shall not exceed the actual time DCLS takes to assess the exemption request. The fee assessed shall be calculated using the method in subsection G of this section.

4. Under 1VAC30-45-140, any person regulated by this chapter may petition the director to grant a variance from any requirement of this chapter. DCLS shall charge an initial fee of $700 plus an additional fee based on the actual time needed for DCLS to review the petition, including any on-site assessment required. The total fee shall not exceed the actual time DCLS takes to review and make a determination on the request for a variance. The fee

shall be determined by the method specified in subsection G of this section.

G. Fee determination.

1. The fee shall be the sum of the total hourly charges for all reviewers plus any on-site review costs incurred.

2. An hourly charge per reviewer shall be determined by (i) obtaining a yearly cost by multiplying the reviewer's annual salary by 1.35 (accounts for overhead such as taxes and insurance) and then (ii) dividing the yearly cost by 1,642 (number of annual hours established by Fiscal Services, ~~DGS~~ the Department of General Services, for billing purposes).

3. The charge per reviewer shall be determined by multiplying the number of hours expended in the review by the reviewer's hourly charge.

4. If an on-site review is required, travel time and on-site review time shall be charged at the same hourly charge per reviewer, and any travel expenses shall be added.

H. Out-of-state laboratories - travel costs. The owner of an environmental laboratory located in another state who applies for certification under this chapter shall also pay a fee equal to the reasonable travel costs associated with conducting an on-site assessment at the laboratory. Reasonable travel costs include transportation, lodging, per diem, and telephone and duplication charges.

I. DCLS shall derive the travel costs charged under subsections G and H of this section from the Commonwealth of Virginia reimbursement allowances and rates for lodging, per diem, and mileage.

1VAC30-46-150. Fees.

A. General.

1. Environmental laboratories shall pay a fee with all applications, including reapplications, for accreditation. DCLS shall not designate an application as complete until it receives payment of the fee.

2. Each accredited environmental laboratory shall pay an annual fee to maintain its accreditation. DCLS shall send an invoice to the accredited environmental laboratory.

3. An environmental laboratory applying for secondary accreditation under 1VAC30-46-140 shall pay the same fee as other laboratories subject to this chapter.

4. Fees shall be nonrefundable.

B. Fee computation.

1. Fees shall be applied on an annual basis.

2. Environmental laboratories shall pay the total of the base fee and the test category fees set out in subsections C and D of this section.

C. Base fee.

1. DCLS determines the base fee for a laboratory by taking into account both the total number of methods and the total number of field of accreditation matrices for which the laboratory would be accredited.

2. DCLS shall charge the base fees set out in Table 1. The base fee for a laboratory is located by first finding the row for the total number of methods to be accredited and then finding the box on that row located in the column headed by the total number of matrices to be accredited. For example, DCLS charges a base fee of ~~$1300~~ $1625 to a laboratory performing a total of eight methods for one matrix.

TABLE 1: BASE FEES

Number of Methods	One Matrix	Two Matrices	Three Matrices	Four or more Matrices
1 - 9	~~$1300~~ $1625	~~$1430~~ $1788	~~$1575~~ $1969	~~$1730~~ $2163
10 - 29	~~$1400~~ $1750	~~$1575~~ $1969	~~$1750~~ $2188	~~$1950~~ $2438
30 - 99	~~$1550~~ $1938	~~$1825~~ $2281	~~$2150~~ $2688	~~$2550~~ $3188
100 - 149	~~$1650~~ $2063	~~$1980~~ $2475	~~$2375~~ $2969	~~$2850~~ $3563
150+	~~$1800~~ $2250	~~$2250~~ $2813	~~$2825~~ $3531	~~$3525~~ $4406

D. Test category fees.

1. The test category fees cover the types of testing for which a laboratory may be accredited as specified in the laboratory's application or as accredited at the time of annual billing.

2. Fees shall be charged for each category of tests to be accredited.

3. Fees shall be charged for the total number of field of accreditation matrices to be accredited under the specific test category. For example, if a laboratory is performing inorganic chemistry for both nonpotable water and solid and chemical matrices, the fee for this test category would be found in the column for two matrices.

4. The fee for each category includes one or more analytical methods unless otherwise specified.

5. Test category fees. DCLS shall charge the test category fees set out in Table 2. The test category fees for a laboratory are located by first finding the row with the total number of test methods for the test category to be accredited. The fee to be charged for the test category will be found on that row in the column headed by the total number of matrices to be accredited. A laboratory performing four test methods for bacteriology in both nonpotable and drinking water (two matrices) would be charged a test category fee of ~~$330~~ $413.

TABLE 2: TEST CATEGORY FEES

	Fees by Number of Matrices		
Test Category	One	Two	Three or More
Aquatic toxicity, acute methods only	~~$400~~ $740	N/A	N/A
Aquatic toxicity, acute and chronic methods	~~$600~~ $990	N/A	N/A
Oxygen demand	~~$225~~ $281	~~$335~~ $419	~~$435~~ $544
Bacteriology, 1 - 3 total methods	~~$175~~ $219	~~$265~~ $331	~~$345~~ $431
Bacteriology, 4 or more total methods	~~$220~~ $275	~~$330~~ $413	~~$430~~ $538
Physical, 1 - 5 total methods	~~$175~~ $219	~~$265~~ $331	~~$345~~ $431
Physical, 6 - 10 total methods	~~$220~~ $275	~~$330~~ $413	~~$430~~ $538
Physical, 11 or more total methods	~~$275~~ $344	~~$415~~ $519	~~$540~~ $675
Inorganic chemistry, 1 - 10 total methods	~~$250~~ $313	~~$375~~ $469	~~$490~~ $613
Inorganic chemistry, 11 - 20 total methods	~~$315~~ $394	~~$475~~ $594	~~$620~~ $775
Inorganic chemistry, 21 - 49 total methods	~~$394~~ $493	~~$590~~ $738	~~$767~~ $959
Inorganic chemistry, 50 or more total methods	~~$492~~ $615	~~$740~~ $925	~~$962~~ $1203
Chemistry metals, 1 - 5 total methods	~~$325~~ $406	~~$490~~ $613	~~$637~~ $796
Chemistry metals, 6 - 20 total methods	~~$410~~ $513	~~$615~~ $769	~~$800~~ $1000
Chemistry metals, 21 or more total methods	~~$512~~ $640	~~$770~~ $963	~~$1000~~ $1250
Organic chemistry, 1 - 5 total methods	~~$400~~ $1020	~~$600~~ $1270	~~$780~~ $1495
Organic chemistry, 6 - 20 total methods	~~$500~~ $1145	~~$750~~ $1458	~~$975~~ $1739
Organic chemistry, 21 - 40 total methods	~~$625~~ $1301	~~$940~~ $1695	~~$1222~~ $2048
Organic chemistry, 41 or more total methods	~~$780~~ $1495	~~$1170~~ $1983	~~$1520~~ $2420
Radiochemical, 1 - 10 total methods	~~$600~~ $990	~~$900~~ $1365	~~$1170~~ $1703
Radiochemical, 11 or more total methods	~~$725~~ $1146	~~$1090~~ $1603	~~$1420~~ $2015
Asbestos	~~$725~~ $1146	~~$1090~~ $1603	~~$1420~~ $2015

6. Fee examples. Three examples are provided.

a. Example 1:

Base Fee	One matrix and four test methods	~~$1300~~ $1625
Test Category Fees		
One Matrix		
Nonpotable Water	Bacteriology (2 methods)	~~$175~~ $219
Nonpotable Water	Oxygen demand (1 method)	~~$225~~ $281
Nonpotable Water	Physical (1 method)	~~$175~~ $219
TOTAL		~~$1875~~ $2344

b. Example 2:

Base Fee	One matrix and 15 test methods	~~$1400~~ $1750
Test Category Fees		
One Matrix		
Nonpotable Water	Bacteriology (2 methods)	~~$175~~ $219
Nonpotable Water	Inorganic chemistry (9 methods)	~~$250~~ $313
Nonpotable Water	Metals (2 methods)	~~$325~~ $406
Nonpotable Water	Oxygen demand (1 method)	~~$225~~ $281
Nonpotable Water	Physical (1 method)	~~$175~~ $219
TOTAL		~~$2550~~ $3188

c. Example 3:

Base Fee	Two matrices and 27 test methods	~~$1575~~ $1969
Test Category Fees		
One Matrix		
Nonpotable Water	Bacteriology (4 methods)	~~$220~~ $275
Nonpotable Water	Oxygen demand (1 method)	~~$225~~ $281
Solid and Chemical Materials	Metals (1 method)	~~$325~~ $406
Two Matrices		
Nonpotable Water and Solid and Chemical Materials	Inorganic chemistry (13 methods)	~~$475~~ $594
Nonpotable Water and Solid and Chemical Materials	Physical (7 methods)	~~$330~~ $413
TOTAL		~~$3150~~ $3938

E. Additional fees. Additional fees shall be charged to laboratories applying for the following: (i) modification to scope of accreditation under 1VAC30-46-90 B, (ii) transfer of ownership under 1VAC30-46-90 C, or (iii) petition for a variance under 1VAC30-46-160.

1. For any accredited environmental laboratory that applies to modify its scope of accreditation as specified under 1VAC30-46-90 B, DCLS shall assess a fee determined by the method in subsection F of this section.

2. Under 1VAC30-46-90 C, DCLS may charge a transfer fee to a certified laboratory that transfers ownership. A fee shall be charged if DCLS (i) needs to review documentation sent by the laboratory about the transfer of ownership or (ii) determines that an on-site assessment is necessary to evaluate the effect of the transfer of ownership. DCLS shall assess a fee determined by the method in subsection F of this section. If, under 1VAC30-46-90 C, DCLS determines that the change of ownership or location of laboratory requires reaccreditation of or reapplication by the laboratory, the laboratory shall pay the application fee required under this section.

3. Under 1VAC30-46-160, any person regulated by this chapter may petition the director to grant a variance from any requirement of this chapter. DCLS shall charge a fee for the time needed to review the petition, including any on-site assessment required. The fee shall be determined by the method specified in subsection F of this section.

F. Additional fees determination.

1. The fee shall be the sum of the total hourly charges for all reviewers plus any on-site review costs incurred.

2. An hourly charge per reviewer shall be determined by (i) obtaining a yearly cost by multiplying the reviewer's annual salary by 1.35 (accounts for overhead such as taxes

and insurance) and then (ii) dividing the yearly cost by 1,642 (number of annual hours established by Fiscal Services, ~~DGS~~ Department of General Services, for billing purposes).

3. The charge per reviewer shall be determined by multiplying the number of hours expended in the review by the reviewer's hourly charge.

4. If an on-site review is required, travel time and on-site review time shall be charged at the same hourly charge per reviewer, and any travel expenses shall be added.

G. Out-of-state laboratories applying for primary accreditation.

1. The owner of an environmental laboratory located in another state who applies for primary accreditation under this chapter shall pay a surcharge of $5000 plus the labor costs of the on-site assessment and reasonable travel costs associated with conducting an on-site assessment at the laboratory. Reasonable travel costs include transportation, lodging, per diem, and telephone and duplication charges. These charges shall be in addition to the fees charged under subdivision A 1 and subsections B through D of this section.

2. Once the laboratory is accredited, DCLS shall charge the annual fee specified in subdivision A 2 and subsections B through D of this section, the labor costs for the on-site assessment, and reasonable travel costs associated with conducting the on-site assessment.

H. DCLS shall derive the travel costs charged under subsections F and G of this section from the Commonwealth of Virginia reimbursement allowances and rates for lodging, per diem, and mileage.

VA.R. Doc. No. R19-6058; Filed June 19, 2019, 1:26 p.m.

◆ ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬ ◆

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Proposed Regulation

Title of Regulation: **2VAC5-317. Regulations for the Enforcement of the Noxious Weeds Law (amending 2VAC5-317-10, 2VAC5-317-20).**

Statutory Authority: § 3.2-802 of the Code of Virginia.

Public Hearing Information:

July 23, 2019 - 2 p.m. - Brent and Becky's Bulbs Chesapeake Lounge, 7900 Daffodil Lane, Gloucester, VA 23061

Public Comment Deadline: September 6, 2019.

Agency Contact: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TTY (800) 828-1120, or email david.gianino@vdacs.virginia.gov.

Basis: Section 3.2-109 of the Code of Virginia establishes the board as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code of Virginia. Section 3.2-802 of the Code of Virginia authorizes the board to establish regulations under which certain plants can be listed as noxious weeds.

Purpose: The intent of the regulatory action is to slow the spread of noxious weeds established in Virginia and prevent the introduction of those listed weed species that are not known to occur into the Commonwealth. The proposed regulatory action is necessary to protect the Commonwealth's agricultural and natural resources from the detrimental impact of noxious weeds. Listed noxious weeds are nonnative invasive plants with very few or no natural predators or existing environmental conditions to control their rapid rate of growth. As a result, noxious weeds can grow rapidly and displace native plants. In addition, the habitat of wildlife may be altered as these plants invariably change the ecosystem by out-competing and displacing native plants. As the spread of a noxious weed can lead to significant economic losses due to associated eradication and control costs, the amendments protect the economic welfare of citizens.

Substance: The proposed regulatory action adds six plant species deemed by the board to meet the definition of "noxious weed" to the list in 2VAC5-317-20. The intent of listing these six plants as noxious weeds is to prevent further introductions or slow the spread of existing populations into the Commonwealth. In addition, the definition of "Tier 3 noxious weed" in 2VAC5-317-10 clarifies the current definition.

Issues: The six plant species recommended for listing as noxious weeds are all invasive plant species; the plant species are highly adaptable to their environment, are copious seed producers, and have an ability to displace native plant species through aggressive and rapid growth. Controlling invasive plants is costly and long term once they become established. Adding the six plants provides an advantage to citizens, as the regulation will serve to prevent the introduction of noxious weeds to uninfested areas or slow the spread from areas that are currently infested. Movement of a listed noxious weed will require that citizens obtain a Virginia Department of Agriculture and Consumer Services (VDACS) permit to minimize the risk associated with moving a listed noxious weed. Through the issuance of this permit, VDACS will provide suggested best practices for the movement of Tier 3 noxious weeds that will prevent the inadvertent spread of these plants. There are no disadvantage to the public or the Commonwealth as a result of this proposed regulatory action.

Department of Planning and Budget's Economic Impact Analysis: The Board of Agriculture and Consumer Services (Board) proposes to add six plant species to the noxious weed list.

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

Estimated Economic Impact. The Board proposes to add six plant species to the noxious weed list. Noxious weeds are any living plant detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or that are determined to be injurious to public health, the environment, or the economy. According to the Virginia Department of Agriculture and Consumer Services (VDACS), newly added noxious weeds are non-native invasive plants with very few or no natural predators or existing environmental conditions to control their rapid rate of growth. As a result, noxious weeds can spread rapidly and displace native plants. In addition, the habitat of wildlife may be altered as these plants invariably change the ecosystem by outcompeting and displacing native plants. Once a plant deemed as a noxious weed by the Board, it cannot be transported without first obtaining a permit. A permit may be requested and issued using electronic means such as email and usually takes a few days for VDACS to evaluate the application. There is no fee required. The permit for the movement of a noxious weed will require compliance with specific best management practices to prevent the inadvertent spread. The primary intent of the permit is to reduce the spread of noxious weeds. For example, according to VDACS, Lake Gaston is currently infested by one of the added species. A boat owner wishing to transport a boat to another lake would be required to obtain a permit and in the process would be educated that the remnants of that plant on the boat could spread it to other surface waters and be advised that the outside of the boat should be thoroughly cleaned before it is transported.

The proposed expansion of the list to include six new species should increase the number of applications for a transport permit as VDACS reports that they are widely present in Virginia. VDACS routinely relies on voluntary compliance to achieve its enforcement actions. As a result, to the extent citizens in infested areas are informed about the permit requirement and comply with it, the spread of these noxious weeds in Virginia should slow down or prevent their introduction in new areas in the first place.

Businesses and Entities Affected. VDACS is unable to estimate the number of businesses and entities who may be required to obtain a permit by the expansion of the noxious weeds list.

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 are unlikely to affect real estate development costs.

Small Businesses:

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

Costs and Other Effects. 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 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.

---

[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 agency concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendments add six plant species to the current noxious weed list and amend the definition of "Tier 3 noxious weed" to be "any noxious weed (i) that is present in the Commonwealth, (ii) whose spread may be slowed by restrictions on its movement, and (iii) for which successful eradication or suppression is not feasible."

2VAC5-317-10. Definitions.

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

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday, or a day on which state government offices are closed.

"Certificate" means a document issued or authorized by the commissioner indicating that a regulated article is not contaminated with a noxious weed.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

"Committee" means the Noxious Weeds Advisory Committee established pursuant to 2VAC5-317-100.

"Compliance agreement" means a written agreement between a person engaged in handling, receiving, or moving regulated articles and the Virginia Department of Agriculture and Consumer Services or the U.S. Department of Agriculture, or both, wherein the former agrees to fulfill the requirements of the compliance agreement and comply with the provisions of this chapter.

"Consignee" means any person to whom any regulated article is shipped for handling, sale, resale, or any other purpose.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Infested" or "infestation" means the presence of a listed noxious weed or the existence of circumstances that make it reasonable to believe that life stages of a listed noxious weed are present.

"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services or other person authorized by the Commissioner of the Virginia Department of Agriculture and Consumer Services to enforce the provisions of this chapter.

"Listed noxious weed" means any plant listed in this chapter as either a Tier 1, Tier 2, or Tier 3 noxious weed.

"Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.

"Noxious weed" means the term as defined in § 3.2-800 of the Code of Virginia.

"Noxious Weeds Law" means the statute set forth in Chapter 8 (§ 3.2-800 et seq.) of Title 3.2 of the Code of Virginia.

"Permit" means a document issued by the commissioner to provide for movement of regulated articles to restricted destinations for limited handling, utilization, processing, or scientific purposes.

"Person" means the term as defined in § 1-230 of the Code of Virginia.

"Regulated article" means any listed noxious weed or any article carrying or capable of carrying a listed noxious weed.

"Tier 1 noxious weed" means any noxious weed that is not known to be present in the Commonwealth.

"Tier 2 noxious weed" means any noxious weed that is present in the Commonwealth and for which successful eradication or suppression is feasible.

"Tier 3 noxious weed" means any noxious weed (i) that is present in the Commonwealth ~~and not listed as a Tier 1 or Tier 2 noxious weed~~, (ii) whose spread may be slowed by restrictions on its movement, and (iii) for which successful eradication or suppression is not feasible.

"Waybill" means a document containing the details of a shipment of goods.

2VAC5-317-20. Tier 1, Tier 2, and Tier 3 noxious weeds.

A. The following plants are hereby declared Tier 1 noxious weeds:

1. Salvinia molesta, Giant salvinia.

2. Solanum viarum, Tropical soda apple.

3. Heracleum mantegazzianum, Giant hogweed.

B. The following plants are hereby declared Tier 2 noxious weeds:

1. Imperata cylindrica, Cogon grass.

2. Lythrum salicaria, Purple loosestrife.

3. Ipomoea aquatica, Water spinach.

4. Vitex rotundifolia, Beach vitex.

5. Oplismenus hirtellus spp. undulatifolius, Wavyleaf basketgrass.

6. Corydalis incisa, Incised fumewort.

C. ~~No plant is hereby declared a Tier 3 noxious weed.~~ The following plants are hereby declared Tier 3 noxious weeds:

1. Ailanthus altissima, Tree of heaven.

2. Ampelopsis brevipedunculata, Porcelain berry.

3. Celastrus orbiculatus, Oriental bittersweet.

4. Hydrilla verticillata, Hydrilla.

5. Persicaria perfoliata, Mile-a-minute weed.

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

FORMS (2VAC5-317)

Noxious Weed Permit Application (eff. 6/2018)

VA.R. Doc. No. R18-5605; Filed June 12, 2019, 12:18 p.m.

Proposed Regulation

Title of Regulation: **2VAC5-320. Regulations for the Enforcement of the Endangered Plant and Insect Species Act (amending 2VAC5-320-10).**

Statutory Authority: §§ 3.2-1002 and 3.2-1005 of the Code of Virginia.

Public Hearing Information:

July 23, 2019 - 2:15 p.m. - Brent and Becky's Bulbs Chesapeake Lounge, 7900 Daffodil Lane, Gloucester, VA 23061

Public Comment Deadline: September 6, 2019.

Agency Contact: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TTY (800) 828-1120, or email david.gianino@vdacs.virginia.gov.

Basis: Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board. Section 3.2-1002 of the Code of Virginia authorizes the board to adopt regulations, including the listing of threatened or endangered species, their taking, quotas, seasons, buying, selling, possessing, monitoring of movement, investigating, protecting, or any other need in furtherance of the purposes of the Endangered Plant and Insect Species Act (§ 3.2-1000 et seq. of the Code of Virginia). Section 3.2-1002 states that based upon investigations by the Commissioner of Agriculture and Consumer Services, recommendations from the Director of the Virginia Department of Conservation and Recreation regarding candidate species, and from other reliable data, the board shall approve proposed species (i) to be added to or deleted from the list of threatened species or the list of endangered species or (ii) to be transferred from one list to the other.

Purpose: The proposed action is essential to the preservation of critically imperiled and imperiled natural resources in Virginia, which protects and promotes the public's health, safety, and welfare. Listing a species as threatened or endangered offers protection to plants and insects that are of aesthetic, ecological, educational, scientific, economic, or other value to the Commonwealth. It also provides for the development and implementation of protection, recovery, and conservation measures to ensure the survival of listed species while allowing projects that could impact those species to proceed in the most economical, biologically-sound, and environmentally-sensitive manner.

Substance: The board proposes to amend the regulation to (i) remove one plant species that is no longer believed to occur in Virginia from the list of threatened species, (ii) add two insect and three plant species that are in danger of extinction to the list of endangered species, and (iii) add five plant species that are likely to become an endangered species within the foreseeable future throughout all or a significant portion of their native range to the list of threatened species.

Issues: The primary advantage of the proposed regulatory action is the protection of threatened or endangered plant and insect species that are of aesthetic, ecological, educational, scientific, economic, or other value and whose global populations are rare and imperiled. Once plants or insects are listed as threatened or endangered, the regulation enables the Virginia Department of Agriculture and Consumer Services to collaborate with landowners, at the landowner's discretion, to develop management plans that would support construction projects and other economic development activity on the landowner's property while minimizing the impact on these valuable, imperiled natural resources. Moreover, when good cause is shown and when necessary to alleviate damage to property, to alleviate the impact on progressive development, or to protect human health, a provision allows for the removal, taking, or destruction of a state listed species. The regulation does not apply to the owner of the property where listed species occur. There is no disadvantage to the landowner, public, or the Commonwealth associated with the proposed amendments to the regulation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to amend the lists of endangered and threatened plant and insect species by: 1) removing from the regulation a plant species that is no longer believed to occur in the Commonwealth and 2) adding to the endangered and threatened lists certain plant and insect species that are considered in danger of extinction or that are likely to become endangered in the foreseeable future throughout all or a significant portion of their native range.

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

Estimated Economic Impact.

Background: Virginia Code § 3.2-10032 specifies that it is "unlawful for any person to dig, take, cut, process, or otherwise collect, remove, transport, possess, sell, offer for sale, or give away any species native to or occurring in the wild in the Commonwealth that are listed in this chapter or the regulations adopted hereunder as threatened or endangered, other than from such person's own land, except in accordance with the provisions of this chapter or the regulations adopted hereunder." The Regulations for the

Enforcement of the Endangered Plant and Insect Species Act, which lists endangered and threatened plant and insect species, qualifies as such a regulation. Virginia Code § 3.2-10113 states that any person who violates the regulations is guilty of a Class 1 misdemeanor. According to the Virginia Department of Agriculture and Consumer Services (VDACS), in practice the agency works with developers to find ways for construction projects, land development, etc. to proceed while mitigating the impact on endangered and threatened plant and insect species. Often the cost is not large; for example, it could entail moving and replanting plants.

As alluded to in the Virginia Code § 3.2-1003 quotation, landowners are exempt from the regulations regarding threatened and endangered plant and insect species occurring on or within their property. Landowners who wish to mitigate harm to threatened and endangered species can benefit from voluntarily working with VDACS. Once plants or insects are listed as threatened or endangered, the regulation enables VDACS to collaborate with landowners, at the landowner's discretion, to develop management plans that would support construction projects and other economic development activity on the landowner's property while minimizing negative impact on the species added to the lists.

Proposal: The Board proposes to add the following five species to the list of endangered species: (i) Clematis addisonii, (ii) Ludwigia ravenii, (iii) Phemeranthus piedmontanus, (iv) Bombus affinis, and (v) Pseudanophthalmus parvicollis. Further, the Board proposes to add the following five species to the list of threatened species: (i) Houstonia purpurea var. montana, (ii) Paxistima canbyi, (iii) Phlox buckleyi, (iv) Pycnanthemum torreyi, and (v) Rudbeckia heliopsidis. According to VDACS, all of these species are only found in remote isolated habitats where construction or other projects are unlikely to occur. Thus, adding these species to the regulation is not likely to have a significant impact. The Board proposes to remove Lycopodiella margueritiae from the list of threatened species because this plant species is no longer believed to occur in Virginia. This proposed amendment would also not likely have a significant impact.

Businesses and Entities Affected. The proposed amendments are unlikely to significantly affect any businesses or other entities.

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

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

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

Real Estate Development Costs. Since the species proposed to be added to the regulation are in remote areas where VDACS does not believe land development or construction would be likely to occur, the proposed amendments are unlikely to significantly affect real estate development costs.

Small Businesses:

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

Costs and Other Effects. Since the species proposed to be added to the regulation are in remote areas where VDACS does not believe land development or construction would be likely to occur, the proposed amendments are unlikely to significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to adversely affect small businesses.

Adverse Impacts:

Businesses: The proposed amendments are unlikely to adversely affect businesses.

Localities:

The proposed amendments are unlikely to adversely affect localities.

Other Entities:

The proposed amendments are unlikely to adversely affect other entities.

---

[1]Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

[2]See https://law.lis.virginia.gov/vacode/title3.2/chapter10/section3.2-1003/

[3]See https://law.lis.virginia.gov/vacode/title3.2/chapter10/section3.2-1011/

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

Summary:

The proposed amendments (i) remove one plant species from the list of threatened species that is no longer believed to occur in Virginia, (ii) add two insect and three plant species that are in danger of extinction to the list of endangered species, and (iii) add five plant species to the list of threatened species that are likely to become endangered species within the foreseeable future throughout all or a significant portion of their native range.

2VAC5-320-10. Listing of endangered and threatened plant and insect species.

A. The Board of Agriculture and Consumer Services hereby adopts the following regulation in order to protect designated plant and insect species that exist in this Commonwealth. All designated species are subject to all sections of the Virginia Endangered Plant and Insect Species Act (§ 3.2-1000 et seq. of the Code of Virginia).

B. The following plant and insect species are hereby declared an endangered species:

1. Boltonia montana, valley doll's-daisy.

2. Bombus affinis, rusty patch bumble bee.

3. Cardamine micranthera, small-anthered bittercress.

~~3.~~ 4. Carex juniperorum, juniper sedge.

~~4.~~ 5. Clematis addisonii, Addison's leatherflower.

6. Corallorhiza bentley, Bentley's coralroot.

~~5.~~ 7. Fimbristylis perpusilla, Harper's fimbristylis.

~~6.~~ 8. Helenium virginicum, Virginia sneezeweed.

~~7.~~ 9. Helonias bullata, swamp-pink.

~~8.~~ 10. Ilex collina, long-stalked holly.

~~9.~~ 11. Iliamna corei, Peter's Mountain mallow.

~~10.~~ 12. Isoetes virginica, Virginia quillwort.

~~11.~~ 13. Isotria medeoloides, small whorled pogonia.

~~12.~~ 14. Ludwigia ravenii, Raven's seedbox.

15. Neonympha mitchellii, Mitchell's satyr butterfly.

~~13.~~ 16. Phemeranthus piedmontanus, Piedmont fameflower.

17. Pseudanophthalmus holsingeri, Holsinger's cave beetle.

18. Pseudanophthalmus parvicollis, Hupp's Hill cave beetle.

~~14.~~ 19. Pseudanophthalmus thomasi, Thomas' cave beetle.

~~15.~~ 20. Ptilimnium nodosum, harperella.

~~16.~~ 21. Puto kosztarabi, Buffalo Mountain mealybug.

~~17.~~ 22. Scirpus ancistrochaetus, Northeastern bulrush.

~~18.~~ 23. Sigara depressa, Virginia Piedmont water boatman.

~~19.~~ 24. Spiraea virginiana, Virginia spiraea.

~~20.~~ 25. Trifolium calcaricum, running glade clover.

C. The following plant and insect species are hereby declared a threatened species:

1. Aeschynomene virginica, sensitive-joint vetch.

2. Amaranthus pumilus, seabeach amaranth.

3. Arabis serotina, shale barren rockcress.

4. Cicindela dorsalis dorsalis, Northeastern beach tiger beetle.

5. Clematis viticaulis, Millboro leatherflower.

6. Echinacea laevigata, smooth coneflower.

7. Houstonia purpurea var. montana, Roan Mountain bluet.

8. Juncus caesariensis, New Jersey rush.

~~8. Lycopodiella margueritiae, Northern prostrate clubmoss.~~

9. Nuphar sagittifolia, narrow-leaved spatterdock.

10. Paxistima canbyi, Canby's mountain-lover.

11. Phlox buckleyi, sword-leaf phlox.

12. Platanthera leucophaea, Eastern prairie fringed orchid.

~~11.~~ 13. Pycnanthemum torreyi, Torrey's mountain-mint.

14. Pyrgus wyandot, Appalachian grizzled skipper.

~~12.~~ 15. Rhus michauxii, Michaux's sumac.

~~13.~~ 16. Rudbeckia heliopsidis, sun-facing coneflower.

17. Scirpus flaccidifolius, reclining bulrush.

VA.R. Doc. No. R18-5606; Filed June 12, 2019, 12:47 p.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: **4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-50).**

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 authorize department-permitted wildlife rehabilitators to receive, possess, provide care for, including to humanely dispatch, and release wildlife.

4VAC15-30-50. Possession, transportation, and release of wildlife by authorized persons.

A. Department employees in the performance of their official duties; U.S. government agencies' employees whose responsibility includes fisheries and wildlife management; county, city, or town animal control officers in the performance of their official duties related to public health concerns or problem wildlife removal; and individuals operating under conditions of a commercial nuisance animal permit issued by the department pursuant to §§ 29.1-412 and 29.1-417 of the Code of Virginia will be deemed to be permitted pursuant to this section to capture, temporarily hold or possess, transport, release, and when necessary humanely dispatch wildlife, provided that the methods of and documentation for the capture, possession, transport, release, and humane dispatch shall be in accordance with director policy.

B. Local animal shelters operating under the authority of, or under contract with, any county, city, or town with animal control responsibilities shall be authorized to receive, temporarily confine, and humanely euthanize wildlife, except for state or federal threatened and endangered species~~;~~, federally protected migratory bird species~~;~~, black bear~~;~~, white-tailed deer~~;~~, and wild turkey, provided that the methods of and documentation for the possession, confinement, and euthanasia shall be in accordance with conditions defined by the agency director. Provided further that any person may legally transport wildlife, except for those species listed in this subsection, to an authorized animal shelter after contacting the facility to confirm the animal will be accepted.

C. Wildlife rehabilitators permitted by the department shall be authorized to receive, temporarily confine, provide medical care to, release, and humanely dispatch wildlife provided that the methods of and documentation for such activities shall be in accordance with permit conditions defined by the department. Any person may capture and transport an injured, debilitated, sick, or orphaned wild animal without unnecessary delay directly to a permitted wildlife rehabilitator, department employee, or other person authorized by the department to possess and transport these animals, but only after contacting the facility, employee, or authorized person to confirm the animal will be accepted. Prior to transport, no care may be provided to a wild animal, except as directed by a permitted wildlife rehabilitator or department employee. Following rehabilitation, [~~any person, under the direction of a permitted wildlife rehabilitator or department employee, may~~ the] transport and release [~~certain species~~] of native wildlife [~~back into the wild in accordance with conditions defined by the department for permitted wildlife rehabilitators~~ shall be allowed as long as such activities are conducted in accordance with permit conditions].

~~C.~~ D. Employees or agents of other state wildlife agencies while in the performance of their official duty in transporting wildlife through the Commonwealth will be deemed to be permitted pursuant to this section, provided that a list of animals to be transported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a letter of authorization from both the forwarding and receiving state agencies are provided to the department 24 hours prior to the transporting of such animals, and further provided that such animals shall not be liberated within the Commonwealth.

~~D.~~ E. Employees or agents of government agencies, while in the performance of their official duties, may temporarily possess, transport, and dispose of carcasses of wild animals killed by vehicles, except for state or federal threatened and endangered species, and federally protected migratory bird species.

~~E.~~ F. With prior written approval from the director or ~~his~~ the director's designee and under conditions of an applicable department permit, institutions with bona fide accreditation from the Association of Zoos and Aquariums may possess, transport, have transported, export, or import native and naturalized species defined in the List of Native and Naturalized Fauna of Virginia, which is incorporated by reference into 4VAC15-20-50.

VA.R. Doc. No. R19-5932; Filed June 5, 2019, 2:45 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: **4VAC15-40. Game: In General (amending 4VAC15-40-60, 4VAC15-40-70, 4VAC15-40-270, 4VAC15-40-275, 4VAC15-40-285; adding 4VAC15-40-276, 4VAC15-40-300).**

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) require hunting weapons be cased or dismantled on certain public lands outside of hunting

season; (ii) define "hunting weapon" to include all hunting weapon types; (iii) update the definition of a loaded muzzleloader; (iv) define loaded arrowgun; (v) clarify where the possession of firearms and the shooting of properly marked mallards and pigeons is allowed and remove the Sunday exception; (vi) open three new wildlife management areas for training dogs on quail; (vii) authorize the sale of unclaimed black bear mounts or processed hides by taxidermists and the sale of nutria, coyote, and certain small game parts; (viii) prohibit feeding cervids in any county within 25 miles of a Chronic Wasting Disease detection; and (ix) make providing incorrect harvest information unlawful.

4VAC15-40-60. Hunting with dogs or possession of weapons in certain locations during closed season.

A. Department-owned ~~lands west of the Blue Ridge Mountains~~ and national forest lands statewide. It shall be unlawful to have in possession a ~~bow, crossbow, or any~~ firearm or any hunting weapon that is not unloaded and cased or dismantled on all national forest lands statewide and on department-owned lands and on other lands managed by the department under cooperative agreement ~~located in counties west of the Blue Ridge Mountains~~ except during the period when it is lawful to take bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, ~~or~~ waterfowl, or migratory gamebirds on these lands.

~~B. Department-owned lands east of the Blue Ridge Mountains. It shall be unlawful to have in possession a bow, crossbow, or any firearm that is not unloaded and cased or dismantled on department-owned lands and on other lands managed by the department under cooperative agreement located in the counties east of the Blue Ridge Mountains except during the period when it is lawful to take bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, waterfowl or migratory gamebirds on these lands.~~

~~C.~~ B. Certain counties. Except as otherwise provided in 4VAC15-40-70, it shall be unlawful to have either a shotgun or a rifle in one's possession when accompanied by a dog in the daytime in the fields, forests or waters of the ~~counties~~ Counties of Augusta, Clarke, Frederick, Page, Shenandoah, and Warren, and in the counties east of the Blue Ridge Mountains, except Patrick, at any time except the periods prescribed by law to hunt game birds and animals.

~~D.~~ C. Shooting ranges and authorized activities. The provisions of this section shall not prohibit the conduct of any activities authorized by the board or the establishment and operation of archery and shooting ranges on the lands described in subsections A~~, B~~ and ~~C~~ B of this section. The use of firearms~~, crossbows, and bows~~ or any hunting weapon in such ranges during the closed season period will be restricted to the area within the established range boundaries. Such weapons shall be required to be unloaded and cased or dismantled in all areas other than the range boundaries. The use of firearms~~, crossbows,~~ or ~~bows~~ any hunting weapon during the closed hunting period in such ranges shall be restricted to target shooting only, and no birds or animals shall be molested.

~~E.~~ D. It shall be unlawful to chase with a dog or train dogs on national forest lands or department-owned lands except during authorized hunting, chase, or training seasons that specifically permit these activities on these lands or during raccoon hound field trials on these lands between September 1 and March 31, both dates inclusive, that are sanctioned by bona fide national kennel clubs and authorized by permits ~~required and~~ issued by the department ~~and~~ or the U.S. Forest Service.

~~F.~~ E. It shall be unlawful to possess or transport any loaded firearm~~,~~ or loaded ~~crossbow~~ hunting weapon in or on any vehicle at any time on national forest lands or department-owned lands.

~~G.~~ F. The provisions of this section shall not prohibit the possession, transport, and use of loaded firearms by employees of the Department of Game and Inland Fisheries while engaged in the performance of their authorized and official duties, nor shall it prohibit possession and transport of loaded concealed handguns where the individual possesses a concealed handgun permit as defined in § 18.2-308 of the Code of Virginia.

~~H.~~ G. Meaning of "possession" of ~~bow, crossbow, or firearm~~ any hunting weapon and definition of "loaded crossbow," "loaded arrowgun," "loaded muzzleloader," and "loaded firearm." For the purpose of this section, the word "possession" shall include~~, but not be limited to,~~ having any ~~bow, crossbow, or~~ firearm or weapon used for hunting in or on one's person, vehicle, or conveyance. For the purpose of this section, a "loaded firearm" ~~shall be defined as~~ means a firearm in which ammunition is chambered or loaded in the magazine or clip when such magazine or clip is engaged or partially engaged in a firearm. The definition of a loaded ~~muzzleloading firearm~~ muzzleloader will include a muzzleloading ~~firearm~~ rifle, pistol, or shotgun that is capped, ~~or~~ has a charged pan, or has a primer or battery installed in the ~~firearm~~ muzzleloader. ~~The definition of a~~ A "loaded crossbow" ~~is~~ means a crossbow that is cocked and has either a bolt or arrow engaged or partially engaged on the shooting rail or track of the crossbow, or with a "trackless crossbow" when the crossbow is cocked and a bolt or arrow is nocked. "Loaded arrowgun" means an arrowgun that has an arrow or bolt inserted on the arrow rest or in the barrel. "Hunting weapon" means any weapon allowable for hunting as defined in § 29.1-519 of the Code of Virginia.

4VAC15-40-70. Open dog training season.

A. Private lands and certain military areas. It shall be lawful to train dogs during daylight hours on squirrels and nonmigratory game birds on private lands, and on rabbits and

nonmigratory game birds on Fort A. P. Hill, Fort Pickett, and Quantico Marine Reservation. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, must comply with all regulations and laws pertaining to hunting, and no game shall be taken; provided, however, that weapons may be in possession on private lands when training dogs on captive raised and properly marked mallards and pigeons so that they may be immediately shot or recovered~~, except on Sunday~~.

B. It shall be lawful to train dogs on rabbits on private lands from 1/2 hour before sunrise to midnight.

C. Designated portions of certain department-owned lands. It shall be lawful to train dogs on quail on designated portions of the Amelia Wildlife Management Area, Cavalier Wildlife Management Area, Chester F. Phelps Wildlife Management Area, Chickahominy Wildlife Management Area, ~~and~~ Dick Cross Wildlife Management Area, Mattaponi Wildlife Management Area, and White Oak Mountain Wildlife Management Area from September 1 to the day prior to the opening date of the quail hunting season, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting, and no game shall be taken.

D. Designated department-owned lands. It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on the Weston Wildlife Management Area from September 1 to March 31, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting, and no game shall be taken.

4VAC15-40-270. Sale of unclaimed taxidermy specimens by licensed taxidermists.

Unclaimed mounted native wildlife specimens or their processed hides, when taken in accordance with the provisions of law and regulations, may be sold by a Virginia licensed taxidermist with the exception of ~~black bears,~~ migratory waterfowl, migratory birds, and state and federally listed threatened and endangered species.

A mount or processed hide shall be considered unclaimed if it has been left in a taxidermy place of business for more than 30 days beyond the period the mount was to remain on the premises pursuant to a contract. This contract must inform the owner of the possibility of such sale. After the 30-day period a notice by registered or certified mail with a return receipt requested must be mailed to the owner of record ~~therein~~, instructing ~~him~~ the owner to reclaim the mount within 15 days of the notice. This notice shall identify the species and the date it was received, set forth the location of the taxidermist facility where it is held, and inform the owner of his rights to reclaim the mount with 15 days of this notice after payment of the specified costs. This notice shall state that the failure of the owner to reclaim the mount or hide within this 15-day ~~time frame~~ timeframe may result in the sale of the unclaimed mount or hide.

If a mount or hide is not claimed after the return of a signed certified receipt and within the 15-day period, then the taxidermist may sell the mount for an amount not to exceed the remainder of the amount of the original invoice plus reasonable administrative and storage costs. Within seven days of the sale of any unclaimed mount the taxidermist shall notify the department in writing of the name, telephone number, and address of the purchaser, invoice price, species sold, taxidermist, and previous owners' name, telephone number, and address. Upon receipt of such paperwork for a bear mount or hide, a conservation police officer will review the paperwork and will provide the purchaser a form that will remain with the mount.

For the purposes of this section, "mount" means the processed hide, pelt, or skin of an animal affixed to a form for display. A processed hide, pelt, or skin is one that has been tanned, cured, chemically preserved, or converted to any usable form beyond initial cleaning, stretching, and drying by the taxidermist or the taxidermist's agent. Nothing in this section shall permit the sale of skulls, claws, teeth, unprocessed hides, or any other parts of a bear that are not a legitimate part of the mount.

4VAC15-40-275. Sale of furbearer, coyote, and nutria pelts, carcasses, and parts.

It shall be unlawful to buy, sell, barter, traffic or trade in, bargain for, or solicit for purchase raw pelts and unskinned carcasses of fur-bearing animals defined in § 29.1-100 of the Code of Virginia, coyotes, and nutria without having first obtained a fur dealer permit in accordance with §§ 29.1-400 through 29.1-407 of the Code of Virginia, except that a permit shall not be required of:

1. Any hunter or trapper, or any person lawfully engaged in the business of fur farming, to sell or dispose of legally taken or possessed raw pelts and unskinned carcasses of fur-bearing animals [, coyotes, and nutria] at any time.

2. Any person to purchase legally taken or possessed raw pelts or unskinned carcasses of fur-bearing animals, coyotes, and nutria at any time if the pelts are to be tanned or used in taxidermy mounts for personal use and not for resale, trade, or other commercial purposes.

3. Any person to buy or sell at any time pelts that are not defined as being raw, skinned carcasses, ~~such as~~ taxidermy mounts, or any other parts of legally taken and possessed fur-bearing animals ~~defined in § 29.1-100 of the Code of Virginia~~, coyotes, and nutria. Such parts shall include skulls, teeth, claws, bones, glands, and secretions. For the purposes of this section, "raw pelt" ~~shall be defined as~~ means any pelt with its hair or fur intact that has not been

tanned, cured, chemically preserved, or converted to any usable form beyond initial cleaning, stretching, and drying. Salt-cured and sun-cured pelts shall be considered raw pelts.

4VAC15-40-276. Sale of small game animals and parts.

It shall be lawful for any person to purchase or sell skins, pelts, skulls, bones, teeth, claws, feet, tails, hair, feathers, taxidermy mounts, and other nonmeat parts of legally taken and possessed rabbits, squirrels, bobwhite quail, ruffed grouse, and pheasants.

4VAC15-40-285. Unauthorized feeding of cervids.

A. It shall be unlawful for any person to place or distribute food, salt, minerals, or similar substances to feed or attract cervids (i) at any time in the ~~counties~~ Counties (including the cities and towns within) of Buchanan, ~~Clarke,~~ Dickenson, ~~Frederick, Shenandoah, Warren, and~~ Wise, and in any county designated by the department within 25 miles of a confirmed detection of Chronic Wasting Disease; (ii) during any deer or elk season within any county, city, or town that allows deer or elk hunting; and (iii) from September 1 through the first Saturday in January, both dates inclusive, elsewhere in the Commonwealth.

B. Any food, salt, minerals, or similar substances placed or distributed to feed or attract cervids prior to September 1 must be completely removed by September 1, and any area where food, salt, minerals, or similar substances were placed or distributed to feed or attract cervids shall be considered to be baited for 10 days following the complete removal of the items listed in this subsection.

C. Upon written notification by department personnel, no person shall continue to place or distribute any food, salt, mineral, or similar substances for any purpose if the placement of these materials results in the attraction of ~~and/or~~ or feeding of cervids. After such notification, such person shall be in violation of this section if the placing, distribution, or presence of such food, salt, minerals, or similar substances continues.

D. No part of this regulation shall be construed to restrict bona fide agronomic plantings (including wildlife food plots), bona fide distribution of food to livestock, or wildlife management activities conducted or authorized by the department.

4VAC15-40-300. Falsifying harvest information prohibited.

It shall be unlawful to provide false statements or record false information when tagging, checking, or reporting the harvest of any wild animal to the department, any agent of the department, or any taxidermist.

VA.R. Doc. No. R19-5924; Filed June 5, 2019, 1:52 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: **4VAC15-50. Game: Bear (amending 4VAC15-50-11, 4VAC15-50-12, 4VAC15-50-71, 4VAC15-50-81, 4VAC15-50-91, 4VAC15-50-110, 4VAC15-50-120).**

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) add the three-day early open season to the Counties of Albemarle, Amherst, Bedford, Frederick, and Nelson; (ii) remove references to Augusta County north and south of U.S. Route 250; (iii) add two weeks of open season to 35 counties in south-central and eastern Virginia; (iv) add two weeks of open season to 11 counties or portions of counties in southwestern Virginia south of I-81; (v) add one week of open season to seven counties or portions of counties in southwestern Virginia north of I-81; (vi) extend the duration of bear hunting within incorporated cities and allow towns to have the same season; (vii) correct a boundary line distinction along Route 16 in Grayson and Smyth Counties; (viii) update the definition of a muzzleloader to current technological standards to match those found in 4VAC15-90-80; (ix) allow for harvested black bears to be checked using the automated harvest reporting system; (x) describe how hunters exempted from needing a license may check black bear harvests; (xi) limit the prohibition on the use of hounds to hunt black bear to only the first two weeks of open deer season should deer season be lengthened to four weeks in Amherst, Bedford, or Nelson County; and (xii) define where bear hound training season is allowed instead of prohibited.

4VAC15-50-11. Open season; generally.

A. It shall be lawful to hunt bears in the following localities, including the cities and towns therein, during the following seasons:

Location	Season
Accomack County	Closed
Albemarle County	~~Fourth~~ Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Alleghany County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Amelia County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Amherst County	~~Fourth~~ Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Appomattox County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Arlington County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Augusta County ~~(North of US-250)~~	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
~~Augusta County (South of US-250)~~	~~Monday following the last Saturday in September and for 2 days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.~~
Bath County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Bedford County	~~Fourth~~ Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Bland County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Botetourt County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Brunswick County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Buchanan County	Monday following the last Saturday in September and for ~~2~~ two days following; and the ~~first~~ fourth Monday in ~~December~~ November through the first Saturday in January, both dates inclusive.
Buckingham County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Campbell County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Caroline County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Carroll County	~~First~~ Monday ~~in~~ nearest December ~~and for 19 days following~~ 2 through the first Saturday in January, both dates inclusive.

Charles City County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Charlotte County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Chesapeake (City of)	October 1 through the first Saturday in January, both dates inclusive.
Chesterfield County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Clarke County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Craig County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Culpeper County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Cumberland County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Dickenson County	Monday following the last Saturday in September and for ~~2~~ two days following; and the ~~first~~ fourth Monday in ~~December~~ November through the first Saturday in January, both dates inclusive.
Dinwiddie County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Essex County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Fairfax County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Fauquier County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Floyd County	~~First~~ Monday ~~in~~ nearest December ~~and for 19 days following~~ 2 through the first Saturday in January, both dates inclusive.
Fluvanna County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Franklin County	~~First~~ Monday ~~in~~ nearest December ~~and for 19 days following~~ 2 through the first Saturday in January, both dates inclusive.
Frederick County	~~Fourth~~ Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Giles County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Gloucester County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Goochland County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Grayson County	~~First~~ Monday ~~in~~ nearest December ~~and for 19 days following~~ 2 through the first Saturday in January, both dates inclusive.
Greene County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.

Greensville County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Halifax County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Hanover County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Henrico County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Henry County	~~First~~ Monday ~~in~~ nearest December ~~and for 19 days following~~ 2 through the first Saturday in January, both dates inclusive.
Highland County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Isle of Wight County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
James City County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
King and Queen County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
King George County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
King William County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Lancaster County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Lee County	Monday following the last Saturday in September and for ~~2~~ two days following; and the ~~first~~ fourth Monday in ~~December~~ November through the first Saturday in January, both dates inclusive.
Loudoun County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Louisa County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Lunenburg County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Madison County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Mathews County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Mecklenburg County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Middlesex County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Montgomery County (southeast of I-81)	~~First~~ Monday ~~in~~ nearest December ~~and for 19 days following~~ 2 through the first Saturday in January, both dates inclusive.
Montgomery County (northwest of I-81)	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Nelson County	~~Fourth~~ Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
New Kent County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Northampton County	Closed

Northumberland County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Nottoway County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Orange County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Page County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Patrick County	~~First~~ Monday ~~in~~ nearest December ~~and for 19 days following~~ 2 through the first Saturday in January, both dates inclusive.
Pittsylvania County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Powhatan County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Prince Edward County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Prince George County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Prince William County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Pulaski County (southeast of I-81)	~~First~~ Monday ~~in~~ nearest December ~~and for 19 days following~~ 2 through the first Saturday in January, both dates inclusive.
Pulaski County (northwest of I-81)	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Rappahannock County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Richmond County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Roanoke County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Rockbridge County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Rockingham County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
~~Russell County (except on the Channels State Forest and Clinch Mountain WMA)~~	~~Monday following the last Saturday in September and for 2 days following; and the first Monday in December through the first Saturday in January, both dates inclusive.~~
Russell County ~~(on the Channels State Forest and Clinch Mountain WMA)~~	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Scott County	Monday following the last Saturday in September and for ~~2~~ two days following; and the ~~first~~ fourth Monday in ~~December~~ November through the first Saturday in January, both dates inclusive.
Shenandoah County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.

Smyth County (southeast of I-81)	~~First~~ Monday ~~in~~ nearest December ~~and for 19 days following~~ 2 through the first Saturday in January, both dates inclusive.
Smyth County (northwest of I-81)	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Southampton County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Spotsylvania County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Stafford County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Suffolk (City of)	October 1 through the first Saturday in January, both dates inclusive.
Surry County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Sussex County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Tazewell County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Virginia Beach (City of)	October 1 through the first Saturday in January, both dates inclusive.
Warren County	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Washington County (southeast of I-81)	~~First~~ Monday ~~in~~ nearest December ~~and for 19 days following~~ 2 through the first Saturday in January, both dates inclusive.
Washington County (northwest of ~~I-81 and east of Route 19)~~ I-81)	Monday following the last Saturday in September and for ~~2~~ two days following; and the ~~first~~ fourth Monday in ~~December~~ November through the first Saturday in January, both dates inclusive.
~~Washington County (northwest of I-81 and west of Route 19)~~	~~Monday following the last Saturday in September and for 2 days following; and the first Monday in December and for 19 days following.~~
Westmoreland County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.
Wise County	Monday following the last Saturday in September and for ~~2~~ two days following; and the ~~first~~ fourth Monday in ~~December~~ November through the first Saturday in January, both dates inclusive.
Wythe County (southeast of I-81)	~~First~~ Monday ~~in~~ nearest December ~~and for 19 days following~~ 2 through the first Saturday in January, both dates inclusive.
Wythe County (northwest of I-81)	Monday following the last Saturday in September and for ~~2~~ two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
York County	Monday nearest December 2 and for ~~5 consecutive hunting~~ 19 days following.

B. [~~Except as provided in the~~ Notwithstanding provisions of] subsection A of this section, bears may be hunted from the first Saturday ~~prior to the fourth Monday~~ in ~~November~~ October through the first Saturday in January, both dates inclusive, within the incorporated limits of any town or city that allows bear hunting.

4VAC15-50-12. Youth and apprentice hunter bear hunting weekend.

It shall be lawful for hunters 15 years of age and ~~under~~ younger and holders of a valid apprentice hunting license, when in compliance with all applicable laws and license requirements, to hunt bears on the second Saturday in October and the following calendar day 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 or apprentice bear hunters on this weekend may not carry or discharge weapons. Bear bag limit, weight limits, and all other take restrictions specifically provided in the sections appearing in this chapter apply to this youth weekend. Bear hunting with dogs is prohibited in the ~~counties~~ Counties of Accomack, Campbell (west of Norfolk Southern Railroad), Fairfax, Grayson ~~(east~~ (west of Route 16), Henry, Loudoun, Northampton, Patrick, Pittsylvania (west of Norfolk Southern Railroad), Roanoke (south of Interstate 81), Smyth (south of Interstate 81 and ~~east~~ west of Route 16), Washington (south of Interstate 81)~~, and~~; in the ~~city~~ City of Lynchburg; and on Amelia, Chester F. Phelps, G. Richard Thompson, and Pettigrew Wildlife Management Areas. Tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

4VAC15-50-71. Muzzleloading gun hunting.

A. It shall be lawful to hunt bears during the special muzzleloading season with muzzleloading guns from the Saturday prior to the second Monday in November through the Friday prior to the third Monday in November, both dates inclusive, except in the Cities of Chesapeake, Suffolk, and Virginia Beach.

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

C. 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 ~~.38~~ .35 caliber or larger projectile) ~~of the same caliber~~ [where the propellant and projectile 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)~~.

D. 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.

4VAC15-50-81. Validating tags and checking bear and tooth submission by licensee or permittee.

A. Any person killing a bear shall, before removing the carcass from the place of kill, validate an appropriate tag on their special license for hunting bear or special permit by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a bear tag from any special license for hunting bear or special permit prior to the killing of a bear. A bear tag that is mistakenly validated (notched) prior to the killing of a bear must be immediately voided by the licensee or permittee by writing, in ink, the word "VOID" on the line provided on the license tag.

B. Upon killing a bear and validating (notching) a license tag or special permit, as provided in subsection A of this section, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag or special permit to an authorized bear checking station or to an appropriate representative of the department in the county or adjoining county in which the bear was killed or report the kill through the department's automated harvest reporting system. ~~Upon presentation of the carcass and validated (notched) license tag or special permit to the bear checking station, the licensee shall surrender or allow to be removed one premolar tooth from the carcass. At such time, the person checking the carcass will be given a game check card. The successful hunter shall then immediately record the game check card number, in ink, on the line provided adjacent to the license tag that was validated (notched) in the field. The game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass~~ At such time, the person checking or reporting the carcass will be given a black bear check card furnished by the department or a confirmation number from the automated reporting system. The successful hunter shall then immediately record the game check card number or confirmation number, in ink, on the line provided on the tag that was validated (notched) in the field. If checked at an authorized bear check station, the black bear check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the bear check card must be securely attached to the carcass. If the kill is reported using the automated harvest reporting system, no check card is required as long as the hunter who killed the animal is in possession of the carcass. If the automated harvest reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a bear killed legally in Virginia may be transported; however, upon request of any authorized law-enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.

C. If the carcass is checked at a bear check station, upon presentation of the carcass and validated (notched) license tag or special permit to the bear checking station, the licensee shall surrender or allow to be removed one premolar tooth from the carcass. If the kill is reported through the department's automated harvest reporting system, a premolar must be removed by the hunter immediately after reporting the kill. The premolar shall be placed in an envelope furnished by the department and labeled with the hunter's full name, check confirmation number, date of kill, and the sex of the harvested bear. This envelope with premolar and accompanying information must be mailed or delivered to the department no later than 14 days after the close of the bear harvest season.

~~C.~~ D. It shall be unlawful for any person to destroy the identity ~~(sex)~~ of the sex of any bear killed unless and until the license tag or special permit is validated (notched) and checked as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required ~~above~~ in subsection A of this section, as long as they do not destroy the identity of the sex ~~of the animal remains identifiable,~~ and all the parts of the carcass are present when the bear is checked at an authorized bear checking station or reported through the automated harvest reporting system. Any bear found in the possession of any person without a validated (notched) license tag or documentation that the bear has been checked at an authorized bear checking station or automated harvest reporting system as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

4VAC15-50-91. Checking bear and tooth submission by persons exempt from license requirements or holding a license authorization number.

A. Upon killing a bear, any person (i) exempt from license requirements as prescribed in § 29.1-301 of the Code of Virginia, ~~or~~ (ii) issued a complimentary license as prescribed in § 29.1-339~~, or the holder~~ of the Code of Virginia, (iii) holding a permanent license issued pursuant to § 29.1-301 E of the Code of Virginia, or (iv) the holder of a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B of the Code of Virginia shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized bear checking station or to any appropriate representative of the department in the county or adjoining county in which the bear was killed, or report the kill through the department's automated harvest reporting system. At such time, the person checking or reporting the carcass shall be given a black bear check card furnished by the department or a confirmation number from the automated reporting system. If checked at a bear check station, the black bear check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the black bear check card must be securely attached to the carcass. If the kill is reported using the automated harvest reporting system, the successful hunter shall immediately create written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number. This written documentation must be kept in possession with the carcass until the carcass is processed. If the automated harvest reported carcass is transferred to the possession of another individual, the written documentation must be transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a black bear killed legally in Virginia may be transported; however, upon request of any authorized law-enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.

~~Upon presentation of the carcass to the~~ B. If the bear is checked at a bear checking station, the person checking the carcass shall surrender or allow to be removed one premolar tooth from the carcass. ~~At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department. The game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass~~ If the kill is reported through the department's automated harvest reporting system, a premolar must be removed by the hunter immediately after reporting the kill. The premolar shall be placed in an envelope furnished by the department and labeled with the hunter's full name, check confirmation number, date of kill, and the sex of the harvested bear. This envelope with premolar and accompanying information must be mailed or delivered to the department no later than 14 days after the close of the bear harvest season.

~~B.~~ C. It shall be unlawful for any person to destroy the identity of the sex of any bear killed until the bear is checked as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the bear is checked at ~~a big game~~ an authorized bear check station or reported through the automated harvest reporting system. Any bear that has not been checked, via an authorized bear check station or the automated harvest reporting system as required by this section, found in the possession of any person exempt from the license requirements or holding a license authorization number shall be forfeited to the Commonwealth to be disposed of as provided by law.

4VAC15-50-110. Use of dogs in hunting bear.

A. It shall be unlawful to use dogs for the hunting of bear during the open season for hunting deer in the counties west of the Blue Ridge Mountains and during the first 16 days of the deer open season in the ~~counties~~ Counties 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, and Nelson (west of Route 151)~~;~~ and within the boundaries of the national forests, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

B. It shall be unlawful to use dogs for the hunting of bear during the first 14 days of the open season for hunting deer in the ~~counties~~ Counties of Greene and Madison, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

C. It shall be unlawful to use dogs for the hunting of bear during the open season prescribed in 4VAC15-50-11 in the ~~counties~~ Counties of Campbell (west of Norfolk Southern Railroad), Carroll (east of the New River), Fairfax, Floyd, Franklin, Grayson (east of the New River), Henry, Loudoun, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), Roanoke (south of Interstate 81), and Wythe (southeast of the New River or that part bounded by Route 21 on the west, Interstate 81 on the north, the county line on the east, the New River on the southeast, and Cripple Creek on the south); in the ~~city~~ City of Lynchburg; and on Amelia, Chester F. Phelps, G. Richard Thompson, and Pettigrew Wildlife Management Areas, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

4VAC15-50-120. Bear hound training season.

A. It shall be lawful to chase black bear with dogs, without capturing or taking, from August 1 through the last Saturday in September, both dates inclusive, in ~~all counties and cities or in the portions in which bear hunting is permitted except in~~ the Counties of ~~Accomack, Amelia, Appomattox, Buckingham, Campbell, Caroline, Charles City, Chesterfield, Clarke, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Grayson (west of Route 16), Halifax, Hanover, Henrico, Henry, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Mathews, Middlesex, New Kent, Northampton, Northumberland, Nottoway, Orange, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Richmond, Roanoke (south of Interstate 81), Smyth (that part south of Interstate 81 and west of Route 16), Southampton, Spotsylvania, Stafford, Surry, Sussex, Westmoreland, and York,~~ Albemarle, Alleghany, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Carroll, Charlotte, Craig, Culpeper, Dickenson, Floyd, Franklin, Giles, Grayson (east of Route 16), Greene, Greensville, Highland, Lee, Lunenburg, Madison, Mecklenburg, Montgomery, Nelson, Page, Pulaski, Rappahannock, Roanoke (west of I-81), Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth (except for the part southeast of I-81 and west of State Route 16), Tazewell, Warren, Washington (northwest of I-81), Wise, and Wythe and in the ~~cities~~ Cities of ~~Hampton, Newport News and Norfolk~~ Chesapeake, Suffolk, and Virginia Beach.

B. It shall be lawful to chase black bear with dogs, without capturing or taking, from the Saturday prior to the third Monday in November and for 14 days following, both dates inclusive, in the Counties of Amelia, Appomattox, Buckingham, Brunswick, Campbell (east of the Norfolk Southern Railroad), Charles City, Charlotte, Cumberland, Essex, Gloucester, Greensville, Halifax, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lunenburg, Mathews, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Pittsylvania (east of the Norfolk Southern Railroad), Prince Edward, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York.

C. It shall be unlawful to have in possession a firearm, bow, crossbow, or any weapon capable of taking a black bear while participating in the bear hound training season. The meaning of "possession" for the purpose of this section shall include having a firearm, bow, crossbow, or any weapon capable of taking a black bear in or on one's person, vehicle, or conveyance.

VA.R. Doc. No. R19-5908; Filed June 5, 2019, 1:32 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: **4VAC15-290. Game: Permits (amending 4VAC15-290-60).**

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 amendment updates the department's Richmond office mailing address.

4VAC15-290-60. Holding wild animals for exhibition purposes.

A. Where an exhibit is educational and purposeful in nature, wild animals may be exhibited with a permit provided for in § 29.1-417 of the Code of Virginia, under such restrictions and conditions as the board may prescribe.

B. Elementary or secondary school teachers may possess and display wildlife for educational purposes without a permit to exhibit wildlife, provided that:

1. Notification of the display is made to the department by mail to Permits Section, VDGIF, P.O. Box ~~11104, Richmond~~ 3337, Henrico, VA ~~23230-1104~~ 23228-3337. This notification shall be made within 48 hours of the beginning of the display, shall be updated any time that additional wildlife is added to the display, and shall include:

a. Number and species of wildlife held for display;

b. Physical address of the location of the display; and

c. Duration for which the display is intended to be maintained.

2. Species allowed to be possessed and displayed pursuant to this subsection shall be limited to those species included in the List of Native and Naturalized Fauna of Virginia, which is incorporated by reference in 4VAC15-20. In addition, in no case shall the following species be possessed and displayed without a permit to exhibit wildlife:

a. Those species included on the list contained in 4VAC15-30-40, whether of native or exotic origin.

b. Fur-bearing animals as defined in § 29.1-100 of the Code of Virginia.

c. Those species defined as nonnative or exotic animals pursuant to 4VAC15-20-50.

d. Migratory birds protected by the federal Migratory Bird Treaty Act (16 USC §§ 703-711).

e. Federal and state threatened and endangered species pursuant to 4VAC15-20-130.

f. Nuisance species designated by § 29.1-100 of the Code of Virginia or 4VAC15-20-160, or nonindigenous aquatic nuisance species designated by § 29.1-571 of the Code of Virginia or 4VAC15-20-210.

g. Predatory or undesirable animals or birds for which a permit is required by 4VAC15-30-20.

3. Any person bitten by mammalian wildlife must report the injury to the local health department. The offending animal must be segregated and housed separately from other animals and humans until the health department is notified.

4. Wildlife must be confined under sanitary and humane conditions that are appropriate for the species in captivity. All cages and enclosures shall be locked at all times when wildlife is not under the immediate control or direct supervision of the handler to prevent wildlife escape and unauthorized contact with individuals.

5. No wildlife held, possessed, or displayed may be released for any purpose without the written authorization of the department.

6. The department shall be notified within 24 hours of an instance of wildlife sickness or disease or in the event of an escape.

7. Teachers possessing and displaying wildlife for educational purposes in accordance with this section shall comply with all other local, state, and federal laws and regulations pertaining to species possessed and displayed.

VA.R. Doc. No. R19-5934; Filed June 5, 2019, 2:36 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 § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia.

Title of Regulation: **4VAC15-400. Watercraft: Accident and Casualty Reporting (amending 4VAC15-400-20).**

Statutory Authority: §§ 29.1-701 and 29.1-735 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 amendment removes the reference to the department's Richmond location, which is no longer accurate, and updates the regulation with the headquarters reference.

4VAC15-400-20. Immediate notification of reportable accident.

When an accident occurs that requires a written report in accordance with 4VAC15-400-30, the operator shall, without delay, by the quickest means available, notify the department ~~in Richmond, Virginia~~ headquarters, or the most immediately available member of the department, of:

1. The date, time, and exact location of the occurrence;

2. The major details of the accident including the name of each person who died or disappeared;

3. The number and name of the vessel; and

4. The names and addresses of the owner and operator.

When the operator of a vessel cannot give the notice required by the foregoing, each person, on board the vessel shall notify the department or a member of its law-enforcement force, or determine that the notice has been given.

VA.R. Doc. No. R19-5935; Filed June 5, 2019, 2:48 p.m.

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-40, 4VAC20-270-51).**

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

Effective Date: July 5, 2019.

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

Summary:

The amendments increase the November bushel limits to match bushel limits in all other months except March and change the seasonal dates for 2019 and 2020 pertaining to blue crab commercial harvest and crab pot removal.

CHAPTER 270
PERTAINING TO ~~CRABBING~~ BLUE CRAB FISHERY

4VAC20-270-40. Season limits.

A. In ~~2018~~ 2019, the lawful season for the commercial harvest of crabs by crab pot shall be March 17 through November 30. In ~~2019~~ 2020, the lawful season for the commercial harvest of crabs by crab pot shall be March 17 through November 30. For all other lawful commercial gear used to harvest crabs, as described in 4VAC20-1040, the lawful seasons for the harvest of crabs shall be April 1 through October 31.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season~~,~~ as described in subsection A of this section.

C. It shall be unlawful for any person knowingly to place, set, fish, or leave any hard crab pot in any tidal waters of Virginia from December 1, ~~2018~~ 2019, through March 16, ~~2019~~ 2020. It shall be unlawful for any person to knowingly place, set, fish, or leave any lawful commercial gear used to harvest crabs, except any hard crab pot or any gear as described in 4VAC20-460-25, in any tidal waters of Virginia from November 1, ~~2018~~ 2019, through March 31, ~~2019~~ 2020.

D. It shall be unlawful for any person knowingly to place, set, fish, or leave any fish pot in any tidal waters from March 12 through March 16, except as provided in subdivisions 1 and 2 of this subsection.

1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:

a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.

b. In the York River the boundary lines shall be the Route 33 bridges at West Point.

c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland to Dahlgren, Virginia.

2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500-50.

E. It shall be unlawful for any person to place, set, or fish any number of fish pots in excess of 10% of the amount allowed by the gear license limit, up to a maximum of 30 fish pots per vessel, when any person on that vessel has set any crab pots.

1. This subsection shall not apply to fish pots set in the areas described in subdivision D 1 of this section.

2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500.

3. This subsection shall not apply to fish pots constructed of a mesh less than one-inch square or hexagonal mesh.

4VAC20-270-51. Daily commercial harvester, vessel, and harvest and possession limits.

A. Any barrel used by a harvester to contain or possess any amount of crabs will be equivalent in volume to no more than ~~3~~ three bushels of crabs.

B. From July 5, ~~2018~~ 2019, through ~~October 31, 2018~~ November 30, 2019, and April 1, ~~2019~~ 2020, through July 4, ~~2019~~ 2020, any ~~Commercial Fisherman Registration Licensee~~ commercial fisherman registration licensee legally licensed for any crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and

possession limits for any of the following crab pot license categories:

1. 10 bushels, or ~~3~~ three barrels and ~~1~~ one bushel, of crabs if licensed for up to 85 crab pots.

2. 14 bushels, or ~~4~~ four barrels and ~~2~~ two bushels, of crabs if licensed for up to 127 crab pots.

3. 18 bushels, or ~~6~~ six barrels, of crabs if licensed for up to 170 crab pots.

4. 29 bushels, or ~~9~~ nine barrels and ~~2~~ two bushels, of crabs if licensed for up to 255 crab pots.

5. 47 bushels, or 15 barrels and ~~2~~ two bushels, of crabs if licensed for up to 425 crab pots.

C. From ~~November 1, 2018, through November 30, 2018, and~~ March 17, ~~2019~~ 2020, through March 31, ~~2019~~ 2020, any ~~Commercial Fisherman Registration Licensee~~ commercial fisherman registration licensee legally licensed for any crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits for any of the following crab pot license categories:

1. ~~8~~ Eight bushels, or ~~2~~ two barrels and ~~2~~ two bushels, of crabs if licensed for up to 85 crab pots.

2. 10 bushels, or ~~3~~ three barrels and ~~1~~ one bushel, of crabs if licensed for up to 127 crab pots.

3. 13 bushels, or ~~4~~ four barrels and ~~1~~ one bushel, of crabs if licensed for up to 170 crab pots.

4. 21 bushels, or ~~7~~ seven barrels, of crabs if licensed for up to 255 crab pots.

5. 27 bushels, or ~~9~~ nine barrels, of crabs if licensed for up to 425 crab pots.

D. When a single harvester or multiple harvesters are on board any vessel, that vessel's daily harvest and possession limit shall be equal to only one daily harvest and possession limit, as described in subsections B and C of this section, and that daily limit shall correspond to the highest harvest and possession limit of only one licensee on board that vessel.

E. When transporting or selling one or more legal crab pot licensee's crab harvest in bushels or barrels, any agent shall possess either the crab pot license of that one or more crab pot licensees or a bill of lading indicating each crab pot licensee's name, address, ~~Commercial Fisherman Registration License~~ commercial fisherman registration license number, date, and amount of bushels or barrels of crabs to be sold.

F. If any police officer finds crabs in excess of any lawful daily bushel, barrel, or vessel limit, as described in this section, that excess quantity of crabs shall be returned immediately to the water by the licensee or licensees who possess that excess over lawful daily harvest or possession limit. The refusal to return crabs, in excess of any lawful daily harvest or possession limit, to the water shall constitute a separate violation of this chapter.

G. When any person on board any boat or vessel possesses a crab pot license, it shall be unlawful for that person or any other person aboard that boat or vessel to possess a seafood buyers boat license and buy any crabs on any day.

VA.R. Doc. No. R19-6061; Filed June 25, 2019, 11:55 a.m.

Final Regulation

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

Title of Regulation: **4VAC20-670. Pertaining to Recreational Gear Licenses (amending 4VAC20-670-30).**

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

Effective Date: July 5, 2019.

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

Summary:

The amendments correct a cross reference regarding daily time limits and remove text that does not accurately describe current gear restrictions.

4VAC20-670-30. Gear restrictions.

A. It shall be unlawful for any person to use any gill net greater than 300 feet in length when licensed for recreational purposes under this chapter except as described in subsection B of this section. Any person licensed to use a recreational gill net up to 300 feet in length shall stay within 100 yards of such net when it is overboard. Failure to attend such net in this fashion is a violation of this chapter.

B. It shall be unlawful for any person to use any anchored gill net when licensed for recreational purposes under this chapter that is greater than 110 feet in length in any of the tidal waters upriver of the saltwater-freshwater boundaries. Any anchored gill net set or placed in areas upriver of the saltwater-freshwater boundaries shall be retrieved within one hour of setting or placing that gill net. Any person licensed to use a recreational anchored gill net shall stay within 100 yards of such net when it is overboard. Failure to attend such net in this fashion is a violation of this chapter, and any unattended anchored gill net shall be confiscated by the marine police officer.

C. It shall be unlawful for any person to use more than five crab pots or more than two eel pots when licensed for recreational purposes under this chapter.

D. Any law or chapter applying to the setting or fishing of commercial gill nets, cast nets, dip nets, crab pots, crab traps, or crab trot lines shall also apply to the gear licensed under this chapter when set or fished for recreational purposes, except that (i) certain commercial gear used for recreational purposes shall be marked in accordance with the provisions described in 4VAC20-670-40, and (ii) the daily time limits for commercial crab potting and peeler potting established in ~~this section~~ 4VAC20-270-30 shall not apply to the setting and fishing of recreational crab pots licensed under this chapter~~, and (iii) the area established in § 28.2-709 of the Code of Virginia shall not apply to the setting and fishing of recreational crab pots licensed under this chapter~~.

E. It shall be unlawful for any person to use any recreational gill net to catch and possess any species of fish whose commercial fishery is regulated by an annual harvest quota.

F. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess more than the recreational possession limit for any species regulated by such a limit. When fishing from any boat, using gear licensed under this chapter, the total possession limit shall be equal to the number of persons on board legally eligible to fish multiplied by the individual possession limit for the regulated species, and the captain or operator of the boat shall be responsible for adherence to the possession limit.

G. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess any fish ~~which~~ that is less than the lawful minimum size established for that species. When the taking of any fish is regulated by different size limits for commercial and recreational fishermen, that size limit applicable to recreational fishermen or to hook-and-line fishermen shall apply to the taking of that species by persons licensed under this chapter.

H. It shall be unlawful for any person to use any ordinary crab trot line greater than 300 feet in length when licensed for recreational purposes under this chapter.

I. It shall be unlawful for any person licensed to use five crab pots under this chapter to fish those pots on Sunday or to fish those pots from September 16 through May 31.

VA.R. Doc. No. R19-6064; Filed June 25, 2019, 11:56 a.m.

Final Regulation

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

Title of Regulation: **4VAC20-1040. Pertaining to Crabbing Licenses (amending 4VAC20-1040-10, 4VAC20-1040-20, 4VAC20-1040-35; repealing 4VAC20-1040-25).**

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

Effective Date: July 5, 2019.

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

Summary:

The amendments (i) change the term "crabbing" to "commercial crab fishery," (ii) repeal the process to appeal license eligibility status, and (iii) add the transfer of eligibility of a crab license to the transferability provision.

CHAPTER 1040
PERTAINING TO ~~CRABBING~~ COMMERCIAL CRAB FISHERY LICENSES

4VAC20-1040-10. Purpose.

The purpose of this chapter is to cap and control effort in the commercial crab fisheries.

4VAC20-1040-20. License sales moratorium and license ineligibility conditions.

A. For any lawful ~~crabbing~~ crab fishery season, commercial licenses for crab pot, peeler pot, crab scrape, crab trap, ordinary trot line, patent trot line, and dip net shall be sold only to those registered commercial fishermen who have been determined by the commission to be eligible to purchase any of these licenses in 2010, except as described in subsection B of this section.

B. For any lawful ~~crabbing~~ commercial crab fishery season, those registered commercial fishermen who were eligible from 2004 through 2008 for any crab pot or peeler pot licenses~~,~~ but reported no harvest from 2004 through 2007~~,~~ were placed on a waiting list in 2009 and shall remain ineligible to purchase a commercial crab pot or peeler pot license~~,~~ in accordance with subsection C of this section.

C. At such time as results from the ~~Chesapeake Bay~~ Bay-wide Blue Crab Winter Dredge Survey indicate that an abundance of 215 million age 1+ female blue crabs (blue crabs 2.4 inches and greater, in carapace width) has been attained in three consecutive, seasonal (December – March) ~~surveys,~~ Bay-wide Blue Crab Winter Dredge Surveys, those registered commercial fishermen on the waiting list as described in subsection B of this section shall resume their eligibility to purchase their commercial crab pot or peeler pot licenses according to a limited and delayed access system established by the ~~Commission~~ commission.

D. Any person receiving a commercial crab license by lawful transfer also establishes his eligibility to purchase that specific license; however, any person either failing to register as a commercial fisherman in any year or lawfully transferring his commercial crab license to another person shall forfeit his eligibility to purchase that specific crab license.

E. ~~Commercial licenses for crab pots, peeler pots, crab scrapes, crab traps, ordinary trot lines, patent trot lines, and crab dip nets may be transferred~~ Any person eligible to purchase any commercial crab license as described in subsection A of this section may transfer that eligibility to an immediate family member of ~~the~~ that eligible licensee at any time ~~and, in~~. In the case of death or incapacitation of the eligible licensee, eligibility for any and all commercial crab licenses may be transferred to a registered commercial fisherman at any time. ~~Crabbing~~ Eligibility for commercial crab licenses ~~also~~ may also be transferred to another registered commercial fisherman, except that not more than 100 licenses shall be transferred in ~~the~~ any current year. All such transfers shall be documented on forms provided by the commission and shall be subject to the approval of the commissioner or his designee.

F. Any commercial crab pot or peeler pot license that ~~is~~ was purchased by the commission through the 2008 Federal Crab Disaster Relief Program shall be permanently retired and shall not be available for sale to any fisherman at any time. Any person whose license ~~is~~ was purchased under the 2008 Federal Crab Disaster Relief Program may re-enter the fishery only through the transfer of another commercial crab pot or peeler pot license as authorized by regulations in effect at the time of the transfer.

4VAC20-1040-25. ~~Appeal process.~~ (Repealed.)

~~Any registered commercial fisherman described in 4VAC20-1040-20 B 2 may appeal the status of his license ineligibility, to the commission, provided he documents one of the following conditions: (i) a health condition that prevented the registered commercial fisherman from harvesting any crabs during the 2004 through 2007 lawful crabbing seasons; (ii) an active military service that prevented the registered commercial fisherman from harvesting any crabs during the 2004 through 2007 lawful crabbing seasons; or (iii) a substantial error in his mandatory harvest reporting records. The deadline for submission to the commission of any appeal under this section shall be June 9, 2009.~~

4VAC20-1040-35. Control date.

The commission hereby establishes December 17, 2007, as the control date for management of all blue crab fisheries in Virginia. Participation by any individual in a commercial crab fishery after the control date will not be considered in the calculation or distribution of crabbing rights should further entry limitations be established. Any individual entering the commercial crab fishery after the control date will have no right to future participation in the commercial crab fishery should further entry limitations be established.

VA.R. Doc. No. R19-6062; Filed June 25, 2019, 11:55 a.m.

Final Regulation

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

Title of Regulation: **4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (amending 4VAC20-1140-20).**

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

Effective Date: July 5, 2019.

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

Summary:

The amendment continues the closure of the 2019–2020 winter crab dredge season.

4VAC20-1140-20. Crab dredging prohibited.

In accordance with the provisions of § 28.2-707 of the Code of Virginia, the crab dredging season of December 1, ~~2018~~ 2019, through March 31, ~~2019~~ 2020, is closed, and it shall be unlawful to use a dredge for catching crabs from the waters of the Commonwealth during that season.

VA.R. Doc. No. R19-6063; Filed June 25, 2019, 11:56 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Fast-Track Regulation

Title of Regulation: **6VAC35-101. Regulation Governing Juvenile Secure Detention Centers (adding 6VAC35-101-45).**

Statutory Authority: §§ 16.1-322.7 and 66-10 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 7, 2019.

Effective Date: August 22, 2019.

Agency Contact: Kristen Peterson, Regulatory Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 588-3902, FAX (804) 371-6490, or email kristen.peterson@djj.virginia.gov.

Basis: Section 66-10 of the Code of Virginia grants the Board of Juvenile Justice the authority to "promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth." Section 16.1-309.9 of the Code of Virginia requires the board to approve "minimum standards for the construction and equipment of detention homes or other facilities and for food, clothing, medical attention, and supervision of juveniles to be housed in these facilities and programs."

Purpose: The Regulation Governing Juvenile Secure Detention Centers (6VAC35-101) applies to detention centers, defined in 6VAC35-101-10 as "local, regional, or state, publicly or privately operated secure custody facilities that house individuals who are ordered to be detained pursuant to the Code of Virginia." Virginia law allows residents to be detained in secure detention centers pending court hearings for allegations of delinquency (predispositional programs) and for up to six months as ordered by a judge (postdispositional programs). In all such cases, the regulation requires detention centers to comply with the department's certification regulations, which are set out in Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (6VAC35-20). Currently, neither chapter addresses programs in which secure detention centers enter into agreements to house residents under the custody of an outside entity. This omission prevents the department from fully carrying out its monitoring, audit, and certification responsibilities with respect to programs that house youth under custody of a separate entity. Under existing regulations, the department does not have express authority to interview these residents, and the department cannot review these residents' files or other documentation unless authorized to do so by the outside entity.

This gap in oversight prevents the department from properly exercising its monitoring, audit, and certification authority over the one juvenile detention center that currently has a contract with the federal government to house residents under federal custody. Additionally, it creates ambiguity with respect to certification requirements for programs that are a product of similar contractual arrangements between detention centers and the department to operate alternative direct care programs such as community placement programs (CPPs) and detention reentry programs.

The proposed amendment will give the department the same oversight authority of these programs and the residents placed in these programs as it currently possesses for predispositional and postdispositional programs by compelling the contracting parties to include certain provisions in their agreements. First, the agreement must subject the program to the department's certification regulations. Second, the agreement must give the department the same access to these residents for purposes of monitoring, audit, and compliance as the department has under the certification regulations for all other residents placed in predispositional and postdispositional programs operated by the detention centers.

This regulatory change is essential to protect the health, safety, and welfare of residents under the custody of separate entities and placed in detention centers pursuant to these agreements. The department cannot ensure that the detention centers are supervising and caring for these residents within the parameters of its regulations and in a manner that promotes safety and security if the department cannot question the residents or access their files or other documents.

Rationale for Using Fast-Track Rulemaking Process: On September 5, 2018, at the request of the department, the board voted to approve an amendment to the Regulation Governing Juvenile Secure Detention Centers for submission through the fast-track rulemaking process. The department identified a gap in its oversight authority with respect to detention centers that enter into agreements to house residents who are under the custody of a separate entity. The proposed amendment will require detention centers, when entering into such agreements with outside entities, to include provisions in the agreement that subject these programs to the department's regulations and that give the department express authority to interview residents, review files, and perform all other activities necessary to determine compliance with department regulation.

The department is not expecting this rulemaking to be controversial. All juvenile secure detention centers operating in the Commonwealth of Virginia, including those that have agreements with outside entities to house youth in the outside entity's custody, currently are subject to department detention center and certification regulations by virtue of their predispositional or postdispositional programs. As a matter of practice, these facilities already seek to comply with the Regulation Governing Juvenile Secure Detention Centers for all residents, even those who are in separate programs or units in the detention center in accordance with these agreements.

The proposed amendment will give the department the authority necessary to determine whether all programs operated in detention centers regulated by the department are complying with state regulations. This authority will assist the department in its efforts to ensure the safety, security, and health of the residents placed in these programs.

Substance: The proposal adds 6VAC35-101-45 to 6VAC35-101, Regulation Governing Juvenile Secure Detention Centers. The new section requires juvenile detention centers, when entering into agreements with separate entities to detain

a juvenile in the separate entity's custody, to ensure that the agreement subjects the program to the department's certification regulations and gives the department the same access to the detained juvenile and the juvenile's records as to all other residents in the detention center. The purpose of this change is to ensure that the department will be able to conduct full audits and have full certification authority over all programs operated in the facility. The proposed amendment is intended to apply to all agreements that meet the criteria set out in the proposal, whether written or oral. The text of the proposed amendment, as initially submitted, erroneously limited the application of the proposal to written agreements. The department has amended the language to correct this error.

As a result of this proposal, the department will have expanded certification authority over these separately-operated programs to carry out any of the following: (i) through the regulatory authority, seek whatever reports and information necessary to establish compliance with the regulatory requirements; (ii) respond to health, welfare, or safety violations in the facility by withholding funds, removing juveniles from the program or facility, placing the program or facility on probationary certification status, or summarily suspending the facility's certificate; (iii) administer periodic, scheduled monitoring visits or monitoring reviews; (iv) perform periodic certification audits; (v) require the program to conduct annual self-audits; (vi) compel the program to develop a corrective action plan for each finding of noncompliance discovered during an audit; or (vii) certify or decertify the facility for a specified period of time in response to a certification audit.

Issues: This proposal is expected to benefit the public by giving the department a vehicle to monitor residents in detention center programs who are under the custody of separate entities. The department will ensure that detention centers are administering these programs in accordance with applicable state regulations and operating them in a manner that protects the safety and security of the residents, staff, and others in these facilities.

The proposal also will benefit other parties to these agreements, including the department, by providing an additional level of monitoring and oversight that will help to ensure that these programs are operating safely and effectively.

The department does not expect this amendment to disadvantage the general public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Juvenile Justice (Board) proposes to eliminate a gap in its authority with respect to juvenile detention centers (JDCs) that enter into agreements to house residents who are under the custody of a separate entity. Currently, the Regulation Governing Juvenile Secure Detention Centers is silent as to agency oversight over these third-party agreements.

Result of Analysis. Overall, the benefits likely exceed the costs for the proposed changes.

Estimated Economic Impact. All JDCs operating in the Commonwealth are subject to the Department of Juvenile Justice's (DJJ's) detention center[1] and certification[2] regulations by virtue of their predispositional or postdispositional programs. But not all juvenile detainees within those facilities are covered. The current Regulation Governing Juvenile Secure Detention Centers does not address contracts between JDCs and separate entities for purposes of detaining juveniles under the separate entity's custody.

There is currently one JDC in Virginia with such a contract with the federal government's Office of Refugee Resettlement (ORR). It has 22 federal migrant children detained. There are also multiple JDCs that have contracts with DJJ to operate detention reentry, community placement, or other similar programs. In FY 2017, nine JDCs operated community placement programs and 13 operated detention reentry programs. Technically, in addition to ORR, DJJ also counts as a separate entity (from the JDCs).

DJJ does currently have express authority to monitor juvenile residential facilities and audit them for compliance with the Regulations Governing Juvenile Secure Detention Centers; however, there is no express statutory or regulatory mechanism giving the DJJ access to the files of residents who are housed in a detention center under these contractual arrangements. Nor is the DJJ authorized to interview these residents to assess the facility's compliance with the regulation without authorization by the outside entity.

Accordingly, the Board proposes to create a new section of the Regulations Governing Juvenile Secure Detention Centers entitled "Contracts between juvenile detention centers and separate entities" that would add language to require JDCs that agree to house residents under the custody of a separate entity to mandate that the programs be subject to the agency's certification regulations. This provision would be included in the contract. In addition, the contract would also authorize DJJ to monitor, audit, and certify these programs using the same criteria as existing predispositional and postdispositional programs operated in the JDC for state-assigned residents. By mandating that these contractual arrangements include an express provision giving the Department this authority, DJJ's certification unit will have the same level of access to these residents and their files as it has currently for residents in predispositional and postdispositional programs. The proposed new language enables the agency to effectively monitor, audit, and certify programs housing youth under a separate entity's custody.

In practice for the juveniles at JDCs through contracts with DJJ for detention reentry, community placement, or other similar programs, the facilities grant DJJ the same level of access to these residents and their files as it has currently for residents in predispositional and postdispositional programs. Thus, the proposed amendments would not likely significantly affect these children and programs.

DJJ does not have such access to the migrant children and their files. The proposed amendments may help the agency ensure that the detention centers are supervising and caring for these residents within the parameters of its regulations and in a manner that promotes safety and security. DJJ staff would spend some additional time reviewing files and interviewing residents. The potential benefits likely exceed the small cost.

Businesses and Entities Affected. The proposed amendments affect DJJ, juvenile detention centers, and outside entities that enter into contracts to allow juvenile detention centers to house residents under that outside entity's custody. The federal Office of Refugee Resettlement currently has a written agreement with a juvenile detention centers in Virginia.

Localities Particularly Affected. The proposed amendments do not disproportionally 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 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 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 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.

---

[1]Regulation Governing Juvenile Secure Detention Centers: https://law.lis.virginia.gov/admincode/title6/agency35/chapter101/

[2]Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities: https://law.lis.virginia.gov/admincode/title6/agency35/chapter20/

Agency's Response to Economic Impact Analysis: The Board of Juvenile Justice has reviewed the Department of Planning and Budget's economic impact analysis and concurs with the analysis.

Summary:

The amendments add required provisions for contracts between juvenile detention centers and separate entities detaining juveniles under the separate entity's custody. The contract must include provisions that (i) subject the program to the department's certification regulations and (ii) authorize the department to monitor, audit, and certify the program in the same manner as existing predispositional and postdispositional programs operated in the detention center for state-assigned residents.

6VAC35-101-45. Contracts between juvenile detention centers and separate entities.

When a detention center enters into an agreement with a separate entity for the purpose of detaining a juvenile in the separate entity's custody, the agreement shall provide that the program housing the juvenile shall be subject to 6VAC35-20, Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities.

1. For purposes of demonstrating compliance with this chapter, the agreement shall allow the department the same access to the detained juvenile and to the records and reports for the detained juvenile as is authorized currently under § 16.1-309.10 of the Code of Virginia and 6VAC35-20 for all other residents in the detention center.

2. Nothing in this section shall prevent the detention center and the separate entity from agreeing that services and treatment shall exceed the requirements of this chapter for those youth in the custody of the separate entity.

VA.R. Doc. No. R19-5649; Filed June 7, 2019, 9:40 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Forms

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

Title of Regulation: **9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities.**

Contact Information: Gary Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 698-4103, or email gary.graham@deq.virginia.gov.

FORMS (9VAC25-880)

~~Construction Activity Operator Permit Fee Form (rev. 9/14)~~

~~Notice of Termination – General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR10) (rev. 1/14)~~

~~Registration Statement – General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR10) (rev. 7/14)~~

~~Transfer of Ownership Agreement Form – General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR10) (rev. 1/14)~~

Annual Standards & Specification (AS&S) Entity Information Sheet (rev. 4/2019)

Construction Activity Operator Permit Fee Form 2019 (rev. 4/2019)

Notice of Termination 2019 (rev. 4/2019)

Registration Statement 2019 (rev. 4/2019)

Transfer of Ownership Agreement 2019 (rev. 4/2019)

VA.R. Doc. No. R19-6037; Filed June 7, 2019, 8:57 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

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

Title of Regulation: **12VAC5-110. Regulations for the Immunization of School Children (amending 12VAC5-110-70).**

Statutory Authority: §§ 22.1-271.2, 32.1-12, and 32.1-46 of the Code of Virginia.

Effective Date: August 9, 2019.

Agency Contact: Kristin Collins, Policy Analyst, Office of Epidemiology, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7298, or email kristin.collins@vdh.virginia.gov.

Summary:

Pursuant to Chapter 222 of the 2019 Acts of Assembly, the amendment changes the requirement for acellular pertussis booster for school children to be prior to seventh grade.

12VAC5-110-70. Immunization requirements.

Every student enrolling in a school shall provide documentary proof of adequate immunization with the prescribed number of doses of each of the vaccines and toxoids listed in the following subdivisions, as appropriate for ~~his~~ the child's age according to the immunization schedules. Spacing, minimum ages, and minimum intervals shall be in accordance with the immunization schedules. A copy of every student's immunization record shall be on file in his school record.

1. Diphtheria Toxoid. A minimum of four properly spaced doses of diphtheria toxoid. One dose shall be administered on or after the fourth birthday and prior to entering kindergarten.

2. Tetanus Toxoid. A minimum of four properly spaced doses of tetanus toxoid. One dose shall be administered on or after the fourth birthday and prior to entering kindergarten.

3. Pertussis Vaccine. A minimum of four properly spaced doses of pertussis vaccine. One dose shall be administered on or after the fourth birthday. A booster dose shall be administered prior to entering the ~~sixth~~ seventh grade.

4. Poliomyelitis Vaccine. A minimum of four doses of poliomyelitis vaccine with one dose administered on or after the fourth birthday and prior to entering kindergarten.

5. Measles (Rubeola) Vaccine. One dose of live measles vaccine administered at age 12 months or older, and a second dose administered prior to entering kindergarten.

6. Rubella Vaccine. A minimum of one dose of rubella virus vaccine administered at age 12 months or older.

7. Mumps Vaccine. One dose of mumps virus vaccine administered at age 12 months or older and a second dose administered prior to entering kindergarten.

8. Haemophilus Influenzae Type b (Hib) Vaccine. A complete series of Hib vaccine (i.e., up to a maximum of four doses of vaccine as appropriate for the age of the child and the age at which the immunization series was initiated). The number of doses administered shall be in accordance with current immunization schedule recommendations. Attestation by the physician or his designee, registered nurse, or an official of a local health department on that portion of Form MCH 213G pertaining to Hib vaccine shall mean that the child has satisfied the requirements of this section. This section shall not apply to children older than 60 months of age or for admission to any grade level, kindergarten through grade 12.

9. Hepatitis B Vaccine. A minimum of three doses of hepatitis B vaccine for all children. The FDA has approved a two-dose schedule only for adolescents 11 through 15 years of age and only when the Merck brand (RECOMBIVAX HB) Adult Formulation Hepatitis B vaccine is used. The two RECOMBIVAX HB adult doses must be separated by a minimum of four months. The two dose schedule using the adult formulation must be clearly documented in the Hepatitis B section on Form MCH 213G.

10. Varicella (Chickenpox) Vaccine. All children born on and after January 1, 1997, shall be required to have one dose of chickenpox vaccine on or after 12 months of age and a second dose administered prior to entering kindergarten.

11. Pneumococcal Conjugate Vaccine (PCV). A complete series of PCV (i.e., up to a maximum of four doses of vaccine as appropriate for the age of the child and the age at which the immunization series was initiated). The number of doses administered shall be in accordance with current immunization schedule recommendations. Attestation by the physician or his designee, registered nurse, or an official of a local health department on that portion of Form MCH 213G pertaining to PCV vaccine shall mean that the child has satisfied the requirements of this section. This section shall not apply to children older than 60 months of age or for admission to any grade level, kindergarten through grade 12.

12. Human Papillomavirus (HPV) Vaccine. Three doses of properly spaced HPV vaccine for females, effective October 1, 2008. The first dose shall be administered before the child enters the sixth grade.

VA.R. Doc. No. R19-6007; Filed June 7, 2019, 10:20 a.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exemption from Article 2 of the Administrative Process Act in accordance with (i) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved and (ii) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **13VAC5-112. Enterprise Zone Grant Program Regulation (amending 13VAC5-112-10, 13VAC5-112-290, 13VAC5-112-340, 13VAC5-112-420, 13VAC5-112-460, 13VAC5-112-530).**

Statutory Authority: § 59.1-541 of the Code of Virginia.

Effective Date: August 7, 2019.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

Summary:

The amendments (i) conform the Enterprise Zone Grant Program Regulation to Chapters 119 and 496 of the 2019 Acts of Assembly, which allow all zones an additional five-year renewal period for a maximum zone duration of 25 years, and to Item 107 of the 2019 Appropriation Act, which allows inclusion of solar panels, as standalone or as part of new construction or rehabilitation projects, as a permitted activity under the program and lowers the

threshold at which solar projects are eligible to receive funding, and (ii) make technical changes updating a mailing address, correcting an incorrect reference, fixing a typo, and conforming text to style guidelines.

Part I
Definitions

13VAC5-112-10. Definitions.

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

"Agreed-upon procedures engagement" means an engagement between an independent certified public accountant licensed by the Commonwealth and the business or zone investor seeking to qualify for Enterprise Zone incentive grants pursuant to § 59.1-549 of the Code of Virginia, whereby the independent certified public accountant, using procedures specified by the department, will test and report on the assertion of the business or zone investor as to their qualification to receive the Enterprise Zone incentive.

"Assumption or acquisition" means, in connection with a trade or business, that the inventory, accounts receivable, liabilities, customer list, and good will of an existing Virginia company has been assumed or acquired by another taxpayer, regardless of a change in federal identification number or employees.

"Average number of permanent full-time employees" means the number of permanent full-time employees during each payroll period of a business firm's taxable year divided by the number of payroll periods. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20:

1. In calculating the average number of permanent full-time employees, a business firm may count only those permanent full-time employees who worked at least half of their normal workdays during the payroll period. Paid leave time may be counted as work time.

2. For a business firm that uses different payroll periods for different classes of employees, the average number of permanent full-time employees of the firm shall be defined as the sum of the average number of permanent full-time employees for each class of employee.

"Base taxable year" means either of two taxable years immediately preceding the first year of qualification, at the choice of the business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Base year" means either of the two calendar years immediately preceding a qualified business firm's first year of grant eligibility, at the choice of the business firm.

"Building" means any construction meeting the common ordinarily accepted meaning of the term (building, a usually roofed and walled structure built for permanent use) where (i) areas separated by interior floors or other horizontal assemblies and (ii) areas separated by fire walls or vertical assemblies shall not be construed to constitute separate buildings, irrespective of having separate addresses, ownership or tax assessment configurations, unless there is a property line contiguous with the fire wall or vertical assembly.

"Business firm" means any corporation, partnership, electing small business (subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth of Virginia. This shall also include business and professional organizations and associations whose classification falls under sectors 813910 and 813920 of the North American Industry Classification Systems and that generate the majority of their revenue from customers outside the Commonwealth.

"Capital lease" means a lease that meets one or more of the following criteria and as such is classified as a purchase by the lessee: the lease term is greater than 75% of the property's estimated economic life; the lease contains an option to purchase the property for less than fair market value; ownership of the property is transferred to the lessee at the end of the lease term; or the present value of the lease payments exceed 90% of the fair market value of the property.

"Common control" means those firms as defined by Internal Revenue Code § 52(b).

"Department" means the Department of Housing and Community Development.

"Establishment" means a single physical location where business is conducted or where services or industrial operations are performed.

1. A central administrative office is an establishment primarily engaged in management and general administrative functions performed centrally for other establishments of the same firm.

2. An auxiliary unit is an establishment primarily engaged in performing supporting services to other establishments of the same firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Existing business firm" means ~~one~~ a business firm that was actively engaged in the conduct of trade or business in an area prior to such an area being designated as an enterprise zone or that was engaged in the conduct of trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone. An existing business firm is also one that was not previously conducted in the

Commonwealth by such taxpayer who acquires or assumes a trade or business and continues its operations. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Expansion" means an increase in square footage or the footprint of an existing nonresidential building via a shared wall, or enlargement of an existing room or floor plan. Pursuant to real property investment grants this shall include mixed-use buildings.

"Facility" means a complex of buildings, co-located at a single physical location within an enterprise zone, all of which are necessary to facilitate the conduct of the same trade or business. This definition applies to new construction, as well as to the rehabilitation and expansion of existing structures.

"Federal minimum wage" means the minimum wage standard as currently defined by the U.S. Department of Labor in the Fair Labor Standards Act, 29 USC § 201 et seq. Such definition applies to permanent full-time employees paid on an hourly or wage basis.

"Food and beverage service" means a business whose classification falls under subsector 722 Food Services and Drinking Places of North American Industry Classification System.

"Full month" means the number of days that a permanent full-time position must be filled in order to count in the calculation of the grant amount under 13VAC5-112-260. A full month is calculated by dividing the total number of days in calendar year by 12. A full month for the purpose of calculating job creation grants is equivalent to 30.416666 days.

"Grant-eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm. Positions in retail, personal service, or food and beverage service shall not be considered grant-eligible positions.

"Health benefits" means that at a minimum medical insurance is offered to employees, and the employer shall offer to pay at least 50% of the cost of the premium at the time of employment and annually thereafter.

"High unemployment area" means enterprise zone localities with unemployment rates one and one-half times or more than the state average based on the most recent annualized unemployment data published by the Virginia Employment Commission.

"Household" means all the persons who occupy a single housing unit. Occupants may be a single family, one person living alone, two or more families living together, or any group of related or unrelated persons who share living arrangements. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Household income" means all income actually received by all household members ~~over the age of~~ older than 16 years of age from the following sources. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20:

1. Gross wages, salaries, tips, commissions, etc. (before deductions);

2. Net self-employment income (gross receipts minus operating expenses);

3. Interest and dividend earnings; and

4. Other money income received from net rents, Old Age and Survivors Insurance, social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities and other sources.

The following types of income are excluded from household income:

1. Noncash benefits such as food stamps and housing assistance;

2. Public assistance payments;

3. Disability payments;

4. Unemployment and employment training benefits;

5. Capital gains and losses; and

6. One-time unearned income.

When computing household income, income of a household member shall be counted for the portion of the income determination period that the person was actually a part of the household.

"Household size" means the largest number of household members during the income determination period. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Housing unit" means a house, apartment, group of rooms, or single room that is occupied or intended for occupancy as separate living quarters. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Income determination period" means the 12 months immediately preceding the month in which the person was hired. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Independent certified public accountant" means a public accountant certified and licensed by the Commonwealth of Virginia who is not an employee of the business firm seeking

to qualify for state tax incentives and grants under this program.

"Job creation grant" means a grant provided under § 59.1-547 of the Code of Virginia.

"Joint enterprise zone" means an enterprise zone located in two or more adjacent localities.

"Jurisdiction" means the city or county that made the application to have an enterprise zone. In the case of a joint application, it means all parties making the application. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of $15 million when such zone investments result in the creation of at least 50 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of $100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Local zone administrator" means the chief executive of the city or county, in which an enterprise zone is located, or his designee. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Low-income" means household income was less than or equal to 80% of area median household income during the income determination period. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Median household income" means the dollar amount, adjusted for household size, as determined annually by the department for the city or county in which the zone is located. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Mixed use" means a building incorporating residential uses in which a minimum of 30% of the useable floor space will be devoted to commercial, office, or industrial use. Buildings where less than 30% of the useable floor space is devoted to commercial, office, or industrial use shall be considered primarily residential in nature and shall not be eligible for a grant under 13VAC5-112-330. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-330.

"Net loss" applies to firms that relocate or expand operations and means (i) after relocating into a zone, a business firm's gross permanent employment is less than it was before locating into the zone, or (ii) after a business firm locates or expands within a zone, its gross employment at its nonzone location ~~or locations~~ is less than it was before the zone location occurred.

"New business" means a business not previously conducted in the Commonwealth by such taxpayer and that begins operation in an enterprise zone after the zone was designated. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"New construction" means a single, nonresidential facility built on previously undeveloped land ~~of~~ or a nonresidential structure built on the site or parcel of a previously razed structure with no remnants of the prior structure or physical connection to existing structures or outbuildings on the property. Pursuant to real property investment grants this shall include mixed-use buildings.

"Number of eligible permanent full-time positions" means the amount by which the number of permanent full-time positions at a business firm in a grant year exceeds the threshold number. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-260.

"Payroll period" means the period of time for which a business firm normally pays its employees.

"Permanent full-time employee" means a person employed by a business firm who is normally scheduled to work (i) a minimum of 35 hours per week for the entire normal year of the business firm's operations, which normal year must consist of at least 48 weeks, (ii) a minimum of 35 hours per week for a portion of the taxable year in which the employee was initially hired for, or transferred to the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Permanent full-time employee also means two or more individuals who together share the same job position and together work the normal number of hours a week as required by the business firm for that one position. Seasonal, temporary, leased, or contract labor employees or employees shifted from an existing location in the Commonwealth to a business firm location within an enterprise zone shall not qualify as permanent full-time employees. This definition only applies to business firms for the purpose of qualifying for enterprise zone incentives pursuant to 13VAC5-112-20.

"Permanent full-time position" (for the purpose of qualifying for grants pursuant to § 59.1-547 of the Code of Virginia) means a job of indefinite duration at a business firm located within an enterprise zone requiring the employee to report to work within the enterprise zone; and requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the business firm's operation, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time per week for the portion of the calendar year in which the employee was initially hired for or transferred to the business firm, or (iii) a minimum of 1,680 hours per year. Such position shall not include (a) seasonal, temporary or contract positions, (b) a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located with an enterprise zone, (c) any position that previously existed in the Commonwealth, or (d) positions created by a business that is simultaneously closing facilities in other areas of the Commonwealth.

"Personal service" means such positions classified under NAICS 812.

"Placed in service" means the final certificate of occupancy has been issued or the final building inspection has been approved by the local jurisdiction for real property improvements or real property investments, or in cases where a project does not require permits, the licensed third party inspector's report that the project was complete; ~~or~~ pursuant to 13VAC5-112-110, the first moment that machinery becomes operational and is used in the manufacturing of a product for consumption; or in the case of tools and equipment, the first moment they are used in the performance of duty or service.

"Qualification year" the calendar year for which a qualified business firm or qualified zone investor is applying for a grant pursuant to 13VAC5-112-260.

"Qualified business firm" means a business firm meeting the business firm requirements in 13VAC5-112-20 or 13VAC5-112-260 and designated a qualified business firm by the department.

"Qualified real property investment" (for purposes of qualifying for a real property investment grant) means the amount expended for improvements to rehabilitate, expand, or construct depreciable real property placed in service during the calendar year within an enterprise zone provided that the total amount of such improvements equals or exceeds (i) $100,000 with respect to a single building or a facility in the case of rehabilitation or expansion or (ii) $500,000 with respect to a single building or a facility in the case of new construction. "Qualified real property investment" includes any such expenditure regardless of whether it is considered properly chargeable to a capital account or deductible as a business expense under federal Treasury regulations. Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical, or electrical improvements necessary to construct, expand, or rehabilitate a building for commercial, industrial or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include~~, but not be limited to,~~ costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup, and installation of solar panels consistent with the provisions of § 59.1-548 of the Code of Virginia and 13VAC5-112-340 A.

Qualified real property investment shall not include:

1. The cost of acquiring any real property or building.

2. Other costs including (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.

3. The basis of any property (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 of the Code of Virginia was previously granted; (iii) that was previously placed in service in Virginia by the qualified zone investor, a related party as defined by Internal Revenue Code § 267(b), or a trade or business under common control as defined by Internal Revenue Code § 52(b); or (iv) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or Internal Revenue Code § 1014(a).

"Qualified zone improvements" (for purposes of qualifying for an Investment Tax Credit) means the amount expended for improvements to rehabilitate or expand depreciable nonresidential real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) $50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. "Qualified zone expenditures" includes any such expenditure regardless of whether it is considered properly chargeable to a capital account or deductible as a business expense under federal Treasury regulations. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to

construct, expand or rehabilitate a building for commercial or industrial use.

1. Qualified zone improvements include the costs associated with excavation, grading, paving, driveways, roads, sidewalks, landscaping or other land improvements, demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and clean-up.

2. Qualified zone improvements do not include (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales, and marketing or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, or inspection fees; (vi) bids insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings; (ix) the cost of any well, septic, or sewer system; or (x) cost of acquiring land or an existing building.

3. In the case of new nonresidential construction, qualified zone improvements also do not include land, land improvements, paving, grading, driveway, and interest. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Qualified zone investment" means the sum of qualified zone improvements and the cost of machinery, tools, and equipment used in manufacturing tangible personal property and placed in service on or after July 1, 1995. Machinery, equipment, tools, and real property that are leased through a capital lease and that are being depreciated by the lessee or that are transferred from out-of-state to a zone location by a business firm may be included as qualified zone investment. Such leased or transferred machinery, equipment, tools, and real property shall be valued using the depreciable basis for federal income tax purposes. Machinery, tools, and equipment shall not include the basis of any property: (i) for which a credit was previously granted under § 59.1-280.1 of the Code of Virginia; (ii) that was previously placed in service in Virginia by the taxpayer, a related party, as defined by Internal Revenue Code § 267(b), or a trade or business under common control, as defined by Internal Revenue Code § 52(b); or (iii) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person whom acquired it, or Internal Revenue Code § 1014(a). This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Qualified zone investor" means an owner or tenant of real property located within an enterprise zone who expands, rehabilitates, or constructs such real property for commercial, industrial, or mixed use. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the building or facility for which the tenant holds a valid lease. In the case of an owner of an individual unit within a horizontal property regime, the amounts of qualified zone investments specified in this section shall relate to that proportion of the building for which the owner holds title and not to common elements. Units of local, state, and federal government or political subdivisions shall not be considered qualified zone investors.

"Qualified zone resident" means an owner or tenant of nonresidential real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade or business by such owner or tenant within the enterprise zone. In the case of a partnership, limited liability company, or S corporation, the term "qualified zone resident" means the partnership, limited liability company, or S corporation. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Real property investment grant" means a grant made under § 59.1-548 of the Code of Virginia. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-330.

"Reduced wage rate threshold" means 150% of the federal minimum wage pursuant to 13VAC5-112-270, 13VAC5-112-280, and 13VAC5-112-285 and high unemployment areas.

"Rehabilitation" means the alteration or renovation of all or part of an existing nonresidential building without an increase in square footage. Pursuant to real property investment grants this shall include mixed-use buildings.

"Regular basis" means at least once a month. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-260.

"Related party" means those as defined by Internal Revenue Code § 267(b).

"Report to work" means that the employee filling a permanent full-time position reports to the business' zone establishment on a regular basis.

"Retail" means a business whose classification falls under sectors 44-45 Retail Trade of North American Industry Classification System.

"Same trade or business" means the operations of a single company ~~or~~, related companies, or companies under common control.

"Seasonal employee" means any employee who normally works on a full-time basis and whose customary annual employment is less than nine months. For example, individuals hired by a ~~CPA~~ certified public accountant firm during the tax return season in order to process returns and

who work full-time over a three-month period are seasonal employees.

"Small qualified business firm" means any qualified business firm other than a large qualified business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Small qualified zone resident" means any qualified zone resident other than a large qualified zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-350 C.

"Subsequent base year" means the base year for calculating the number of grant-eligible positions in a second or subsequent five consecutive calendar year grant period. If a second or subsequent five-year grant period is requested within two years after the previous five-year grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant-eligible positions in the final year of the previous grant period. If a business firm applies for subsequent five consecutive calendar-year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as subsequent base year, at the choice of the business firm.

"Tax due" means the amount of tax liability as determined by the Department of Taxation or the State Corporation Commission. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-110.

"Tax year" means the year in which the assessment is made. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Taxable year" means the year in which the tax due on state taxable income, state taxable gross receipts, or state taxable net capital is accrued. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-110.

"Threshold number" means an increase of four permanent full-time positions over the number of permanent full-time positions in the base year or subsequent base year.

"Transferred employee" means an employee of a firm in the Commonwealth ~~that~~ who is relocated to an enterprise zone facility owned or operated by that firm.

"Useable floor space" means all space in a building finished as appropriate to the use of the building as represented in measured drawings. Unfinished basements, attics, and parking garages would not constitute useable floor space. Finished common areas such as stairwells and elevator shafts should be apportioned appropriately based on the majority use (51%) of that floor.

"Wage rate" means the hourly wage paid to an employee inclusive of shift premiums and commissions. In the case of salaried employees, the hourly wage rate shall be determined by dividing the annual salary, inclusive of shift premiums and commissions, by 1,820 hours. Bonuses, overtime, and tips are not to be included in the determination of wage rate.

"Zone" means an enterprise zone declared by the Governor to be eligible for the benefits of this program.

"Zone real property investment tax credit" means a credit provided to a large qualified zone resident pursuant to § 59.1-280.1 J of the Code of Virginia. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Zone resident" means a person whose principal place of residency is within the boundaries of any enterprise zone. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. Zone residency must be verified annually. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

13VAC5-112-290. Application submittal and processing.

A. In order to claim the grant, an application must be submitted to the department on a prescribed form ~~or forms~~. Applicants shall provide other documents as prescribed by the department.

B. Local zone administrators must verify that the location of the business is in the enterprise zone in a manner prescribed by the department.

C. The accuracy and validity of information provided in such applications, including that related to permanent full-time positions, wage rates and provision of health benefits are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with current attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the department as assurance that the firm has met the criteria for qualification prescribed in this section.

D. Business firms with base year employment of 100 or fewer permanent full-time positions and that create in a qualification year 25 or fewer grant eligible positions seeking to qualify for job creation grants as provided for in § 59.1-547 of the Code of Virginia shall be exempt from the attestation requirement for that qualification year. The permanent full-time positions, wage rates, and provision of health benefits of such business firms shall be subject to verification by the department.

E. In order to request job creation grants, business firms shall submit the application form, final attestation report, if an attestation is required, and all required documentation to the department by no later than April 1 of the calendar year subsequent to the qualification year.

F. If the April 1 due date falls on a weekend or holiday, applications are due the next business day.

G. Applications submitted by April 1 without the required attestation report shall be considered late applications and processed according to subsection ~~H~~ I of this section.

H. The department shall notify the business in writing of any incomplete or missing required documentation or request written clarification from the business firm on information provided by no later than May 15. Business firms must respond to any unresolved issues by no later than June 1. If the department does not meet its May 15 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.

I. Any applications with the required final attestation report and required documentation submitted after the April 1 due date but before May 15 of the calendar year subsequent to the qualification year will be held until the department determines that funds remain and it will not have to prorate grant awards. At such time, the department will review and process such applications and any applications pursuant to subsection F of this section on a first-come first served basis.

J. The department shall award job creation grants and notify all applicants by June 30 as to the amount of the grant they shall receive.

K. Applications must either be hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked no later than the date specified in this section.

L. Applicants may only apply for grants that they are otherwise eligible to claim for such calendar year, subject to the limitations provided by 13VAC5-112-400.

13VAC5-112-340. Computation of grant amount.

A. For any qualified zone investor, the amount of the grant shall be equal to 20% of the amount of qualified real property investment in excess of $500,000 in the case of the construction of a new building or facility. In the case of the rehabilitation or expansion of an existing building or facility grants shall be equal to 20% of the amount of qualified real property investment in excess of $100,000. Beginning on January 1, 2019, the installation of solar panels shall be considered eligible investments for the purposes of the real property investment grant. A qualified zone investor may receive a grant for the installation of solar panels provided that such solar installation investment is in an amount of at least $50,000 and the grant shall be calculated at a rate of 20% of the amount of qualified real property investments in excess of $450,000 in the case of construction of a new building or facility. Grants shall be calculated at a rate of 20% of the amount of qualified real property investment in excess of $50,000 in the case of the rehabilitation or expansion of an existing building or facility. In the case where the grant is awarded based solely on solar investment, the grant shall be calculated at a rate of 20% of the amount of total qualified real property investments made in solar installation. For such properties eligible for real property investment grants made solely on the basis of solar installation investments of at least $50,000 but not more than $100,000, awards shall not exceed $1 million in aggregate in any fiscal year. Qualified zone investments are defined ~~as below~~ in subdivisions 1 and 2 of this subsection:

1. Qualified zone investments include expenditures associated with (i) any exterior, interior, structural, mechanical, or electrical improvements necessary to construct, expand, or rehabilitate a building for commercial, industrial, or mixed use; (ii) excavations; (iii) grading and paving; (iv) installing driveways; and (v) landscaping or land improvements. These can include~~, but not be limited to,~~ costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup, and solar panels.

2. Qualified real property investments do not include:

a. The cost of acquiring any real property or building.

b. Other costs, including~~:~~ (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.

c. The basis of any property~~:~~ (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 of the Code of Virginia was previously granted; (iii) which was previously placed in service in Virginia by the qualified zone investor, a related party as defined by § 267(b) of the Internal Revenue Code, or a trade or business under common control as defined by § 52(b) of the Internal Revenue ~~Code)~~ Code; or (iv) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or § 1014(a) of the Internal Revenue Code.

B. For any qualified zone investor making less than $5 million in qualified real property investment, the cumulative grant will not exceed $100,000 within any five-year period for any building or facility.

1. In cases where subsequent qualified real property investment within the five-year period results in the total qualified real property investment equaling $5 million or more then the qualified ~~investor(s)~~ investors shall be eligible to receive ~~a grant(s)~~ grants provided that the total of all grants received within the five-year period does not exceed a maximum of $200,000 per building or facility.

2. In such cases the grant will be available to the qualified zone investor ~~or investors~~ whose qualified real property investment ~~application(s)~~ application results in the total qualified real property investment for the building or facility to equal $5 million or more for the calendar year in which the $5 million threshold is met. The grant will be equal to 20% of the amount of qualified real property investment in excess of $500,000 in the case of the construction of a new building or facility, or in the case of the rehabilitation or expansion of an existing building or facility 20% of the amount of qualified real property investment in excess of $100,000 notwithstanding the $200,000 cap per building or facility pursuant to subsection D of this section.

C. For any qualified zone investor making $5 million or more in qualified real property investments, the cumulative grant will not exceed $200,000 within any five-year period for any building or facility.

D. Notwithstanding subsection E of this section, in the case of a building with multiple tenants ~~and/or~~ or owners, the maximum amount of the real property investment grant to each tenant ~~and/or~~ or owner shall relate to the proportion of the property for the tenant holds a valid lease or the owner has a deed of trust.

1. This maximum shall be determined by the cumulative level of qualified real property investment made within the five consecutive year period. The first five consecutive year period starts with the first real property investment grant issued pursuant to § 59.1-548 of the Code of Virginia.

2. If the total of all qualified real property investments up to and including those made in the current grant year are less than $5 million then the maximum real property investment grant that any one qualified zone investor shall receive shall be equal to the qualified zone investor's proportion of the building or facility's useable floor space times $100,000 or 20% of the amount of qualified real property investment in excess of $500,000 in the case of the construction of a new building or facility, or in the case ~~in the case~~ of the rehabilitation or expansion of an existing building or facility 20% of the amount of qualified real property investment in excess of $100,000, whichever is less.

3. If the total of all qualified real property investments up to and including those made in the current grant year are $5 million or more then the maximum real property investment grant that any one qualified zone investor shall receive shall be equal the qualified zone investor's proportion of the building or facility's useable floor space times $200,000 or 20% of the amount of qualified real property investment in excess of $500,000 in the case of the construction of a new building or facility, or in the case of the rehabilitation or expansion of an existing building or facility, 20% of the amount of qualified real property investment in excess of $100,000, whichever is less.

E. The total grant amount per building or facility within a five-year period shall not exceed $200,000.

Part VII
Enterprise Zone Designation

13VAC5-112-420. Status of enterprise zones designated prior to July 1, 2005.

All enterprise zones designated pursuant to §§ 59.1-274, 59.1-274.1, and 59.1-274.2 of the Code of Virginia as those that were in effect prior to July 1, 2005, shall continue in effect until the end of their ~~20-year~~ designation period. Such zones shall be governed by the provisions of Chapter 49 (§ 59.1-438 et seq.) of Title 59.1~~, exclusive of § 59.1-542 E~~ of the Code of Virginia.

Part VIII
Procedures and Requirements for Zone Designations

13VAC5-112-460. Procedures for zone application and designation.

A. Upon recommendation of the Director of the Department of Housing and Community Development, the Governor may designate up to 30 enterprise zones in accordance with the provisions of this section. Such designations are to be done in coordination with the expiration of existing zones designated under earlier Enterprise Zone Program provisions or the termination of designations pursuant to 13VAC5-112-510, 13VAC5-112-520, and 13VAC5-112-530 D.

B. Applications for zone designation will be solicited by the department on a competitive basis in accordance with the following procedures and requirements:

1. An application for zone designation must be submitted on Form EZ-1 to the Director, Virginia Department of Housing and Community Development, ~~501 North Second Street~~ 600 East Main Street, Suite 300, Richmond, Virginia 23219, on or before the submission deadline established by the department.

2. Each applicant ~~jurisdiction(s)~~ jurisdiction must hold at least one public hearing on the application for zone

designation prior to submission of the application to the department. Notification of the public hearing is to be in accordance with § 15.2-2204 of the Code of Virginia relating to advertising of public hearings. An actual copy of the advertisement must be included in the application.

3. In order to be considered in the competitive zone designation process an application from a ~~jurisdiction(s)~~ jurisdiction must include all the requested information, be accompanied by a ~~resolution(s)~~ resolution of the local governing ~~body(s)~~ body and be signed by the chief ~~administrator(s)~~ administrator or the ~~clerk(s)~~ clerk to county board of supervisors where there is no chief administrator. The chief ~~administrator(s)~~ administrator or ~~clerk(s)~~ clerk, in signing the application, must certify that the applicant ~~jurisdiction(s)~~ jurisdiction held the public hearing required in subdivision 2 of this subsection.

C. Within 60 days following the application submission deadline, the department shall review and the ~~Director~~ director shall recommend to the Governor those applications that meet a minimum threshold standard as set by the department and are competitively determined to have the greatest potential for accomplishing the purposes of the program.

D. Enterprise zones designated pursuant to § 59.1-542 of the Code of Virginia will be designated for an initial 10-year period except as provided for in 13VAC5-112-510 and 13VAC5-112-520. Upon recommendation of the director of the department, the Governor may renew zones for up to two five-year renewal periods.

E. A local governing body whose application for zone designation is denied shall be notified and provided with the reasons for denial.

Part XII
Procedures for Enterprise Zone Renewal

13VAC5-112-530. Procedures for zone renewal.

A. Enterprise zones designated pursuant to 13VAC5-112-460 are in effect for an initial 10-year period with up to ~~two~~ three five-year renewal periods, except as provided for in 13VAC5-112-510 and 13VAC5-112-520. Enterprise zones designated prior to July 1, 2005, are eligible for one five-year renewal. Recommendations for five-year renewals shall be based on the locality's performance of its enterprise zone responsibilities, the continued need for such a zone, and its effectiveness in creating jobs and capital investment. The following procedures shall be used in considering such an enterprise zone for renewal.

B. In anticipation of the ~~tenth and fifteen~~ 10th, 15th, and 20th anniversaries of an enterprise zone's designation, the ~~locality(s)~~ locality shall submit to the department on the prescribed form information regarding, but not limited to, (i) the area conditions; (ii) the continued need for the enterprise zone; and (iii) its long-term effectiveness in creating jobs and capital investment. The department shall also consider the ~~locality(s)~~ locality's long-term performance of enterprise zone responsibilities.

C. A jurisdiction that has shown satisfactory performance and effectiveness, or that is making steady improvement in performance and effectiveness, or has a continued need for an enterprise zone will be recommended to the Governor by the department for an additional five-year designation period. No enterprise zone designation shall be in effect more than ~~20~~ 25 years.

D. A jurisdiction that has shown consistently poor performance and effectiveness or that no longer needs an enterprise zone will not be recommended for renewal and will be notified of such in writing by the department.

VA.R. Doc. No. R19-5966; Filed June 18, 2019, 10:45 a.m.

◆ ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬ ◆

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **14VAC5-235. Rules Governing Health Insurance Balance Billing (adding 14VAC5-235-10, 14VAC5-235-20, 14VAC5-235-30).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: August 9, 2019.

Agency Contact: James Young, Insurance Policy Advisor, Bureau of Insurance, State Corporation Commissioin, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9612, FAX (804) 371-9944, or email james.young@scc.virginia.gov.

Summary:

Pursuant to Chapter 432 of the 2019 Acts of Assembly, the action promulgates Rules Governing Health Insurance Balance Billing (14VAC5-235). The proposed provisions of the new chapter remove the burden of surprise balance billing from the covered person and allow the covered

person to actively choose whether to receive health care services from an in-network or out-of-network provider at an in-network facility for nonemergency services.

AT RICHMOND, JUNE 6, 2019

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2019-00081

Ex Parte: In the matter of Adopting New
Rules Governing Health Insurance Balance Billing

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found at the Commission's website: http://www.scc.virginia.gov/case.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to promulgate new rules at Chapter 235 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Health Insurance Balance Billing," which are recommended to be set out at 14 VAC 5-235-10 through 14 VAC 5-235-30.

The proposed new rules are necessary in light of the enactment of § 38.2-3445.1 of the Code, which takes effect on July 1, 2019, by the 2019 General Assembly and based on the complaints the Bureau has received related to surprise balance billing. The provisions of the new chapter are intended to remove the burden from the covered person and allow them to actively choose whether they receive health care services from an in-network or out-of-network provider at an in-network facility for non-emergency services.

NOW THE COMMISSION is of the opinion that the proposal to adopt new rules recommended to be set out at Chapter 235 in the Virginia Administrative Code as submitted by the Bureau should be considered for adoption with a proposed effective date of October 1, 2019.

Accordingly, IT IS ORDERED THAT:

(1) The proposed new rules entitled "Rules Governing Health Insurance Balance Billing," recommended to be set out at 14 VAC 5-235-10 through 14 VAC 5-235-30, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the adoption of, proposed Chapter 235 shall file such comments or hearing request on or before August 9, 2019, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: http://www.scc.virginia.gov/case. All comments shall refer to Case No. INS-2019-00081.

(3) If no written request for a hearing on the adoption of the proposed new rules as outlined in this Order is received on or before August 9, 2019, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the rules as submitted by the Bureau.

(4) The Bureau forthwith shall provide notice of the proposal to all health carriers licensed in Virginia to offer a managed care health insurance plan and to all interested persons.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: http://www.scc.virginia.gov/case.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

CHAPTER 235
RULES GOVERNING HEALTH INSURANCE BALANCE BILLING

14VAC5-235-10. Definitions.

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

"Cost-sharing requirement," "in-network provider," and "provider group" shall have the meanings set forth in § 38.2-3445.1 of the Code of Virginia.

"Covered benefits," "covered person," "emergency services," "facility," "health benefit plan," "health care provider," "health carrier," "managed care plan," and "network" shall have the meanings set forth in § 38.2-3438 of the Code of Virginia.

"Elective health care services" means covered benefits rendered to a covered person that are not emergency services.

"Out-of-network provider" means a health care provider or provider group that is not contracted with a health carrier to provide health care services to a covered person under a health benefit plan as a member of the health benefit plan's network.

14VAC5-235-20. Balance billing of provider services.

A. Any provider contract entered into by and between a facility and a health carrier offering a managed care plan shall contain a provision that requires the facility to notify a covered person no later than at the time of preadmission or preregistration if the covered person will or is likely to receive elective health care services from an out-of-network provider and document in writing that this notice was provided to the covered person. Prior to the covered person's receipt of elective health care services, the facility shall obtain written consent from the covered person to either (i) accept any necessary health care services from in-network providers only or (ii) accept any necessary health care services from out-of-network providers. The notice provided to the covered person shall state that elective health care services received from an out-of-network provider may result in amounts owed in addition to any cost-sharing requirements.

B. Any provider contract entered into by and between a facility and a health carrier offering a managed care plan shall also contain a provision that notifies a facility that failure to comply with requirements of subsection A of this section shall result in the facility being financially responsible for any elective health care services rendered by the out-of-network provider to the extent that the cost of these services exceeds the covered person's in-network cost-sharing requirements.

C. A health carrier offering a managed care plan shall seek to amend its provider contracts to comply with the provisions of subsections A and B of this section as soon as practicable but no later than (insert date 90 days after the effective date of this regulation).

D. The notice requirement contained in subsection A of this section applies notwithstanding the provisions of § 38.2-3445.1 of the Code of Virginia.

14VAC5-235-30. Severability.

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

VA.R. Doc. No. R19-6030; Filed June 6, 2019, 11:43 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Proposed Regulation

Title of Regulation: **18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18VAC10-20-10, 18VAC10-20-20, 18VAC10-20-25, 18VAC10-20-35, 18VAC10-20-50 through 18VAC10-20-75, 18VAC10-20-110 through 18VAC10-20-160, 18VAC10-20-200 through 18VAC10-20-270, 18VAC10-20-295 through 18VAC10-20-382, 18VAC10-20-392, 18VAC10-20-420 through 18VAC10-20-460, 18VAC10-20-490, 18VAC10-20-495, 18VAC10-20-505, 18VAC10-20-627 through 18VAC10-20-683, 18VAC10-20-740, 18VAC10-20-760, 18VAC10-20-790, 18VAC10-20-795; adding 18VAC10-20-345; repealing 18VAC10-20-190, 18VAC10-20-215, 18VAC10-20-510 through 18VAC10-20-620, 18VAC10-20-750).**

Statutory Authority: §§ 54.1-201 and 54.1-404 of the Code of Virginia.

Public Hearing Information:

July 12, 2019 - 10 a.m. - Department of Professional and Occupational Regulation, Virginia Commonwealth Conference Center, 9960 Mayland Drive, 2nd Floor, Board Room 3, Richmond, VA 23233

Public Comment Deadline: September 6, 2019.

Agency Contact: 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.

Basis: Section 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board. Section 54.1-404 of the Code of Virginia requires the board to promulgate regulations governing the professional qualifications of applicants, the requirements necessary for passing examinations in whole or in part, the proper conduct of its examinations, the implementation of exemptions from license requirements, and the proper discharge of its duties.

Purpose: The licensing and certification requirements for board-regulated design professionals are complex regarding entry and professional conduct due to the public health and safety aspects inherent in the practice of the applicable professions. The proposed regulatory action addresses questions that arise from applicants and regulants and ensures regulations of the board are more understandable and up-to-date with what is necessary for each profession.

Although the last general review of the board's regulations became effective on January 1, 2016, that regulatory action was first initiated in 2010. In the time elapsed since that final action became effective, professional and industry standards have changed enough to warrant another review. Ensuring that board regulations remain consistent with current professional practice standards is essential for establishing minimum qualifications for regulants to perform their duties while protecting the health, safety, and welfare of the citizens of the Commonwealth.

Substance: For individuals, the proposed amendments add a reference component for land surveyor applicants to align their application requirements with the other regulants. The amendments also allow engineers-in-training and surveyors-in-training to sit for the fundamentals exam prior to submitting an application to the board.

For business entities, the proposed regulations streamline the registration process into one category of business entity, allowing companies looking to conduct business in Virginia to complete the process more expeditiously.

Issues: The primary advantage to the public is that buildings and site plans will continue to be developed by minimally competent professionals. The proposed regulatory action will allow applicants and regulants to understand the board regulations with greater clarity, facilitating more efficient licensing, and better aligning with industry standards of practice. The proposed amendments benefit applicants and regulants by ensuring the regulations are clearly written, consistent, and easily understandable. The action will facilitate more efficient application and licensing processing, and better align with industry standards of practice, all of which protects the public's health, safety, and welfare. No disadvantages to the public have been identified. The primary advantage to the Commonwealth will be the continued successful regulation of minimally competent design professionals. Another advantage is that the proposed regulatory action reflects the importance Virginia places on ensuring regulations are the least burdensome but also provide protection to the citizens of the Commonwealth. There are no disadvantages posed by these proposed regulations to the board, the Department of Professional and Occupational Regulation, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (Board) proposes numerous changes primarily to reduce the burdens on regulants and to clarify the regulation.

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

Estimated Economic Impact. This regulation applies to architects, professional engineers, land surveyors, certified interior designers, and landscape architects as well as businesses offering the services of these professionals. The Board proposes numerous changes generally to reduce the burdens on regulants and to clarify the regulation. The substantive provisions are discussed below.

One of the proposed changes will consolidate treatment of various categories of business formations under one single category. Current regulation has separate fees, language, and requirements for professional corporations, foreign corporations, professional limited liability corporations, and foreign professional limited liability companies. The Board proposes to consolidate the regulatory language and the fees under only one category for all types of business entities. There is no known logical reason to distinguish the fees and language among entities based on their business formation. The proposed change will reduce the regulatory language and bring consistency among all business entities. The current and proposed fee structure is as follows:

	Current Professional Corporation	Current Professional Limited Liability Company	Current Any Other Business Type	Proposed for All Business Types
Registration	$30	$100	$100	$90
Branch Office Registration	$30	$50	$50	$45
Registration Renewal/2 years	$25	$50	$50	$45
Branch Office Registration Renewal/2 years	$25	$50	$50	$45

The proposed single fee schedule for all business formation types is budget neutral. The Board staff estimates that in fiscal year 2020 there would be 374 new business applications and 3,516 business renewals including branch offices. Of the new businesses 18% would pay a higher fee and 82% would pay a lower fee. Of the renewals 25% would pay a higher fee and 75% would pay a lower fee.

Another substantive proposed change is to revise what is considered full-time for determining length of experience. Under the proposed regulation, thirty hours per week will be considered full-time. Thirty-five hours per week is considered full-time under the current regulation. Reducing the amount of hours considered full-time will make it easier for applicants to meet the experience requirements.

The proposed regulation will also allow a landscape architect applicant to qualify for a license by obtaining a minimum of 48 months of experience under the direct control and personal supervision of a licensed architect, professional engineer, or land surveyor. Under the current regulation, an applicant is required to have at least 12 of the 36 required months of experience under the direct supervision of a certified or licensed landscape architect. The proposed regulation makes it possible to obtain a license without any direct supervision of a landscape architect albeit it requires an additional 12 months of supervision. According to the Department of Professional Occupational Regulation (DPOR), the population of certified or licensed landscape architects is limited. The experience requirement has been a barrier to licensure as they could not obtain credit for experience they acquired in a practice or under an individual that did not have a licensed or certified landscape architect. The addition of this provision will provide an additional avenue for an applicant to meet the experience requirement. Since licensure applicants still must complete all landscape architecture-specific education requirements, applicants taking advantage of the proposed new experience option should be well-qualified to practice safely.

Another proposed change will provide additional options to applicants who have been living and practicing in the United States in addition to taking Test of English as a Foreign Language (TOEFL) to demonstrate their competency in English. TOEFL has been considered a barrier to licensure or certification for comity applicants. Currently, applicants whose primary language has not always been English, or who have not graduated from a college or university in which English is the medium of instruction, are required to take the TOEFL. Under the proposed changes, other evidence such as significant academic or work experience in English may be acceptable as determined by the Board.

Two proposed changes are related to references. First, the proposed regulation will require submission of three references from land surveyor licensure applicants to align their application requirements with the other professions. Second, the proposed regulation will allow two of the landscape architect references to be from a professional engineer, an architect or a land surveyor. Currently, all references are required to be from landscape architects. These changes will align reference requirements across different professions; make sure assertions of land surveyors are accurate; and make it easier to obtain references for landscape architects.

The proposed amendments will incorporate in the regulation language allowing engineers-in-training and surveyors-in-training to sit for the fundamentals exam prior to submitting a licensure application to the Board. According to DPOR, this reflects current Board practice since January 1, 2014. The proposed process is also in line with what is occurring in other states. The engineer-in-training and surveyors-in-training designations will not be issued until applicants have met the Board's requirements. This change gives more flexibility to the applicants.

Overall, the proposed changes discussed above will reduce the burdens on regulants by making it easier to register businesses and to meet experience and other requirements. There are numerous other less substantive or non-substantive changes not discussed above that will also provide additional regulatory relief or improve the clarity of the language.

Businesses and Entities Affected. There are 4,412 businesses, 7,309 architects, 28,510 professional engineers, 1,364 land surveyors, 125 photogrammetrists, and 899 landscape architects regulated under these rules.

Localities Particularly Affected. There are no localities particularly affected.

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

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

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

Small Businesses:

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

Costs and Other Effects. Most of the 4,412 registered businesses are small with the exception of several. The proposed change in business registration fees is budget neutral. Of the new businesses 18% would pay a higher fee and 82% would pay a lower fee. Of the renewals 25% would pay a higher fee and 75% would pay a lower fee.

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

Adverse Impacts:

Businesses. The proposed amendments do not have a significant adverse impact on businesses.

Localities. The proposed amendments will not adversely affect localities.

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

Agency's Response to Economic Impact Analysis: The agency concurs with approval of the economic Impact analysis.

Summary:

The proposed amendments include (i) adding a reference component to align landscape architects and land surveyor application requirements with other board regulants, (ii) allowing engineers-in-training and surveyors-in-training to take the fundamentals exam prior to submitting an application, (iii) considering 30 hours per week full-time employment for determining length of experience, (iv) providing additional options to applicants who have been living and practicing in the United States to demonstrate their competency in English, and (v) streamlining the registration process by having one category for all types of business entities with a single fee schedule. The proposed amendments also simplify explanations of requirements, streamline processes, and clarify the regulation.

Part I
General

18VAC10-20-10. Definitions.

Section 54.1-400 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Architect

Board

Certified interior designer

Interior design. When used in this chapter, interior design shall only be applicable to interior design performed by a certified interior designer.

Land surveyor. When used in this chapter, land surveyor shall include surveyor photogrammetrist unless stated otherwise or the context requires a different meaning.

Landscape architect

Practice of architecture

Practice of engineering

Practice of land surveying

Practice of landscape architecture

Professional engineer

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"Application" means a completed application with the appropriate fee and any other required documentation including~~, but not limited to,~~ references, experience verification, degree verification, and verification of examination and licensure or certification.

~~"Certified" means an individual holding a valid certification issued by the board and in good standing.~~

"Comity" means the recognition of licenses or certificates issued by other states or other jurisdictions of the United States as permitted by § 54.1-103 C of the Code of Virginia.

"Department" means the Department of Professional and Occupational Regulation.

"Direct control and personal supervision" means supervision by a professional who oversees and is responsible for the work of another individual.

"Good moral character" may be established if the applicant or regulant:

1. Has not been convicted of a ~~felony or~~ misdemeanor in the last 10 years or has ever been convicted of a felony that would render the applicant unfit or unsuited to engage in the occupation or profession applied for in accordance with § 54.1-204 of the Code of Virginia;

2. Has not committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, negligence, or incompetence reasonably related to:

a. The proposed area of practice within 10 years prior to application for licensure, certification, or registration~~,~~; or

b. The area of practice related to licensure, certification, or registration by the board while under the authority of the board~~.~~;

3. Has not engaged in fraud or misrepresentation in connection with the application for licensure, certification, or registration, or related ~~examination~~ exam;

4. Has not had a license, certification, or registration revoked or suspended for cause or been disciplined by ~~this~~ the Commonwealth or by any other jurisdiction, or surrendered or has surrendered a license, certificate, or registration in lieu of disciplinary action; or

5. Has not practiced without the required license, registration, or certification in ~~this~~ the Commonwealth or

in another jurisdiction within the five years immediately preceding the filing of the application for licensure, certification, or registration by ~~this~~ the Commonwealth.

"Good standing" means that the regulant holds a current or active license, certificate, or registration issued by ~~a~~ any regulatory body that is not ~~revoked, suspended, or surrendered~~ subject to a current sanction. The regulant shall be in good standing in every jurisdiction where licensed, certified, or registered.

~~"Licensed" means an individual who holds a valid license issued by the board.~~

"Place of business" means any location that, through professionals, offers or provides the services of architecture, engineering, land surveying, landscape architecture, ~~certified~~ interior design, or any combination thereof. A temporary field office established and utilized for the duration of a specific project shall not qualify as a place of business under this chapter.

"Profession" means the practice of architecture, engineering, land surveying, landscape architecture, or ~~certified~~ interior design.

"Professional" means an architect, professional engineer, land surveyor, landscape architect, or certified interior designer who holds a ~~valid~~ license or certificate issued by the board pursuant to the provisions of this chapter and is in good standing with the board to practice his profession in ~~this~~ the Commonwealth.

"Registrant" means a business holding a ~~valid~~ registration issued by the board~~,~~ and in good standing~~,~~ to offer or provide one or more of the professions regulated by the board.

"Regulant" means an architect, professional engineer, land surveyor, or landscape architect holding a ~~valid~~ license issued by the board ~~an~~ and is in good standing; a certified interior designer holding a valid certification issued by the board and is in good standing; or a registrant.

"Resident" means physically present at the place of business a majority of its operating hours.

"Responsible person" means the professional named by the registrant to be responsible and have control of the registrant's regulated services offered, rendered, or both. A professional can only be the responsible person for the ~~professions~~ profession indicated on his ~~license~~ licenses or ~~certification~~ certifications.

"Surveyor photogrammetrist" means a person who by reason of specialized knowledge in the area of photogrammetry has been granted a license by the board to survey land in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia for the determination of topography, contours, or location of planimetric features using photogrammetric methods or similar remote sensing technology.

Part II
General Entry Requirements

18VAC10-20-20. General application requirements.

A. Applicants must be of good moral character.

B. Applications shall be completed in accordance with instructions contained in this ~~section~~ chapter and on the application.

C. Applications for licensure requiring an exam shall be received in the board's office by the application deadline established in Part III (18VAC10-20-90 et seq.) of this chapter for each profession's exam. The date the ~~fully documented~~ application is received in the board's office shall determine if the application has been received on time. Applications, accompanying materials, and references become the property of the board upon receipt by the board.

D. Applicants shall meet all entry requirements at the time application is made.

E. Applicants shall provide the board with all required documentation and fees to complete the application for licensure or certification no later than three years from the date of the board's receipt of the initial application fee. Applications that remain incomplete after that time will no longer be processed by the board and the applicant shall submit a new application.

F. The board may make further inquiries and investigations with respect to an applicant's qualifications and documentation to confirm or amplify information supplied.

G. Failure of an applicant to comply with a written request from the board for additional evidence or information within 60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.

H. Applicants who do not meet the requirements of 18VAC10-20-20 or 18VAC10-20-40 may be approved following consideration by the board in accordance with the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia)

18VAC10-20-25. References.

In addition to the requirements found in 18VAC10-20-130, 18VAC10-20-220, 18VAC10-20-345, and 18VAC10-20-425, as applicable, references that are submitted as part of an application must comply with the following:

1. Written references shall be on the board-approved form and shall be no more than one year old at the time the application is received in the board's office; and

2. The individual providing ~~the~~ this reference must have known the applicant within the last five years from the date of this application and for at least one year~~;~~.

~~3. The individual providing the reference must have known the applicant within the last five years from the date of application to the board; and~~

~~4. Individuals who provide references shall not also verify experience.~~

18VAC10-20-35. Experience.

All experience or training requirements contained in this chapter shall be on the board-approved form and will be evaluated based on the ~~rate of an applicant working a minimum of 35 hours per week~~ applicant working a minimum of 30 hours per week. Any experience gained at ~~a rate of less than 35~~ less than 30 hours per week may be prorated at the sole discretion of the board.

18VAC10-20-50. Transfer of scores to other boards.

The board, at its discretion and upon proper application, may forward the ~~grades~~ scores achieved by an applicant in the various exams given under the board's jurisdiction to any other duly constituted registration board for use in evaluating the applicant's eligibility for registration within another board's jurisdiction or evaluation of the applicant's national certification. An applicant requesting that his score be transferred to another registration board shall state his reason for the request in writing.

18VAC10-20-55. Language and comprehension.

Applicants for licensure or certification shall be able to speak and write English to the satisfaction of the board. Applicants whose primary language has not always been English, or who have not graduated from a college or university in which English is the language of instruction, shall submit to the board a Test of English as a Foreign Language Internet-based Test (TOEFL iBT) score report. Score reports shall not be over two years old at the time of application and must reflect a score acceptable to the board. In lieu of the TOEFL, other evidence such as significant academic or work experience in English may be acceptable as determined by the board.

18VAC10-20-70. Modifications to examination administration.

The board and the department support and comply with the provisions of the Americans with Disabilities Act (ADA), 42 USC § 12101 et seq. Contracts between the board, department, and vendors for ~~examinations~~ exams contain provisions for compliance with the ADA. Requests for accommodations must be in writing and received in the board's office within a reasonable time before the ~~examination~~ exam. The board may require a report from a medical professional along with supporting data confirming the nature and extent of the disability. The applicant is responsible for providing the required information in a timely manner including the costs for providing the information. The board or its ~~agents~~ designee will determine, consistent with applicable law, any accommodations to be made.

18VAC10-20-75. Conduct at examination.

Applicants approved for an exam will be given specific instructions as to the conduct of each division of the exam at the exam site. Applicants are required to follow these instructions to ~~assure~~ ensure fair and equal treatment to all applicants during the course of the exam. ~~Evidence of misconduct~~ Misconduct may result in removal from the exam site, voided exam scores, ~~or both~~ and restriction from future exam access.

18VAC10-20-110. Education.

A. Applicants for original licensure shall hold a professional degree in architecture from a program accredited by the National Architectural Accrediting Board (NAAB) or be actively participating in an integrated path accepted by the National Council of Architectural Registration Boards (NCARB) to architectural licensure option within a NAAB-accredited professional degree program in architecture. The degree program must have been accredited by NAAB no later than two years after the date of the applicant's graduation from the program.

B. Applicants seeking credit for a degree or coursework that is not NAAB-accredited, whether foreign or domestic, shall establish an NCARB record and have that degree or coursework evaluated for equivalency to a NAAB-accredited professional degree in architecture through NAAB's evaluation service. The board reserves the right to reject~~, for good cause, any evaluation submitted. Any cost of translation and~~ any evaluation submitted. Any costs attributable to evaluation shall be borne by the applicant.

18VAC10-20-120. Experience.

A. Applicants for original licensure shall successfully complete the National Council of Architectural Registration Boards (NCARB) ~~Intern Development Program (IDP) IDP training requirements shall be in accordance with NCARB's Intern Development Program Guidelines, December 2013 Edition.~~ administered architectural experience program.

B. Applicants must have a minimum of 36 months ~~experience/training~~ experience or training in architecture~~. Any experience/training of less than eight consecutive weeks will not be considered in satisfying this requirement~~, which shall be obtained in an organization offering architectural services that is led by a licensed architect in charge of the organization's architectural practice. The experience must be verified by a licensed architect in the organization's architectural practice on the board's experience verification form.

~~C. Of the 36 months of required experience/training in architecture, at least 12 months shall have been obtained as an employee in the office of a licensed architect. An organization will be considered to be an office of a licensed architect if:~~

~~1. The architectural practice of the organization in which the applicant works is under the charge of a person practicing as a principal, where a principal is a licensed architect in charge of an organization's architectural practice either alone or with other licensed architects, and the applicant works under the direct supervision of a licensed architect; and~~

~~2. The practice of the organization encompasses the comprehensive practice of architecture including the categories set forth in the NCARB IDP requirements.~~

~~D.~~ C. Applicants with a NAAB-accredited degree or who are actively participating in or who have completed the NCARB-accepted integrated path to architectural licensure option are required to document their experience or training in architecture before licensure.

18VAC10-20-130. References.

Applicants shall submit three references with the application, all of which shall be from currently licensed architects in a state or other jurisdiction of the United States or a ~~province of Canada,~~ country in which a mutual recognition agreement has been executed between itself and NCARB and accepted by the board. In addition to the requirements found in 18VAC10-20-25, the applicant shall only submit references from licensed architects who have personal knowledge of the applicant's architectural experience that demonstrates the applicant's competence and integrity.

18VAC10-20-140. Examination.

A. The board is a member board of NCARB and is authorized to make available the NCARB-prepared exam. Applicants for original licensure are required to pass this exam.

B. Applications for original licensure shall be approved by the board before applicants will be allowed to sit for the exam. Applicants who have satisfied the requirements of 18VAC10-20-110 and 18VAC10-20-130 and who are currently enrolled in ~~the NCARB IDP~~ or have completed the NCARB-administered architectural experience program shall be admitted to the exam.

C. Applicants approved by the board to sit for the exam shall register and submit the required exam fee and follow NCARB procedures when taking the exam. Applicants not properly registered will not be allowed to sit for the exam.

D. Applicants approved to sit for the exam shall be eligible for a period of three years from the date of their initial approval. Applicants who do not pass all sections of the exam during their eligibility period are no longer eligible to sit for the exam. To become exam-eligible again, applicants shall reapply to the board as follows:

1. Applicants who have taken at least one section of the exam and who reapply to the board no later than six months after the end of their eligibility may be approved to sit for the exam for an additional three years. The original application requirements shall apply.

2. Applicants who do not meet the criteria of subdivision 1 of this subsection shall reapply to the board and meet all entry requirements current at the time of reapplication.

E. Applicants will be notified ~~by the board~~ of whether they passed or failed the exam. The exam ~~may~~ shall not be reviewed by applicants. Unless authorized by NCARB rules and procedures, exam ~~Exam~~ scores are final and not subject to change.

F. ~~Grading~~ Scoring of the exam shall be in accordance with the national grading procedure administered by NCARB. ~~The board shall utilize the scoring procedures recommended by NCARB. Grades for each division of the exam passed on or after January 1, 2006, shall be valid in accordance with the procedure established by NCARB.~~

G. The board may approve transfer credits for parts of the exam taken and passed in accordance with national standards.

H. Applicants who have been approved for and subsequently pass the exam and who have satisfied 18VAC10-20-110, 18VAC10-20-120, and 18VAC10-20-130 shall be issued an architect license.

18VAC10-20-150. Licensure by comity.

A. Applicants who hold a valid active license in another state or other jurisdiction of the United States~~, a province of Canada, or another foreign country~~ or a country in which a mutual recognition agreement has been executed between itself and NCARB and accepted by the board may be granted a license provided that they meet the requirements of 18VAC10-20-25 and:

1. They possess an NCARB certificate; or

2. They met the requirements for licensure that were substantially equivalent to those in effect in Virginia ~~that were in effect~~ at the time they were originally licensed.

B. Applicants who do not satisfy the requirements of subsection A of this section shall meet the entry requirements for initial licensure pursuant to this chapter.

Part IV
Qualifications for Licensing of Professional Engineers

18VAC10-20-160. Definitions.

The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"ABET" means the Accreditation Board for Engineering and Technology.

"Approved engineering ~~curriculum"~~ program" means an undergraduate engineering ~~curriculum~~ program of four years or more~~,~~ or a graduate engineering ~~curriculum,~~ program approved by the board. ABET-approved ~~engineering EAC curricula~~ EAC programs are approved by the board. ~~Curricula~~ Programs that are accredited by ABET not later than two years after an applicant's graduation shall be deemed as ABET-approved.

"Approved engineering technology ~~curriculum"~~ program" means an undergraduate engineering technology ~~curriculum~~ program of four years or more approved by the board. ABET-approved ~~engineering technology TAC curricula~~ ETAC programs of four years or more are approved by the board. ~~Curricula~~ Programs that are accredited by ABET not later than two years after an applicant's graduation shall be deemed as ABET-approved.

"EAC" means Engineering Accreditation Commission.

"Engineer-in-training" or "EIT" means an applicant who has completed any one of several combinations of education, or education and experience, and has passed the Fundamentals of Engineering exam.

"ETAC" means Engineering Technology Accreditation Commission.

"Related science ~~curriculum" includes, but is not limited to,~~ program" means a four-year ~~curriculum~~ program in biology, chemistry, geology, geophysics, mathematics, physics, or other ~~curriculum approved by the board. Curriculums~~ programs approved by the board. Programs must have a minimum of six semester hours of mathematics courses beyond algebra and trigonometry and a minimum of six semester hours of science courses in calculus-based physics in order to be considered a related science ~~curriculum~~ program.

"Qualifying engineering experience" means a record of progressive experience on engineering work during which the applicant has made a practical utilization of acquired knowledge and has demonstrated progressive improvement, growth, and development through the utilization of that knowledge as revealed in the complexity and technical detail of the applicant's work product or work record. The applicant must show progressive assumption of greater individual responsibility for the work product over the relevant period. The progressive experience on engineering work shall be of a ~~grade and character~~ type and quality that indicates to the board that the applicant is minimally competent to practice engineering. Qualifying engineering experience shall be progressive in complexity and based on a knowledge of engineering mathematics, physical and applied sciences, properties of materials, and fundamental principles of engineering design.

~~"TAC"means" Technology Accreditation Commission~~.

18VAC10-20-190. ~~Requirements for the Fundamentals of Engineering (FE) exam.~~ (Repealed.)

~~In order to be approved to sit for the Fundamentals of Engineering (FE) exam, applicants must satisfy one of the subsections (A through E) of this section. Applicants shall:~~

~~EDUCATIONAL REQUIREMENTS~~	~~NUMBER OF REQUIRED YEARS OF QUALIFYING ENGINEERING EXPERIENCE~~
~~A. Student applicants.~~ ~~1. Be enrolled in an ABET accredited undergraduate EAC or TAC curriculum, have 12 months or less remaining before completion of the degree, and provide a certificate of good standing from the dean of the engineering school or his designee;~~ ~~2. Be enrolled in an ABET accredited graduate or doctorate EAC or TAC curriculum, have six months or less remaining before completion of the degree, and provide a certificate of good standing from the dean of the engineering school or his designee; or~~ ~~3. Be enrolled in a graduate curriculum that is ABET accredited TAC or EAC at the undergraduate level at the institution at which the graduate degree is being sought, have six months or less remaining before completion of the degree, and provide a certificate of good standing from the dean of the engineering school or his designee.~~	~~0~~

~~B. Have graduated from an approved engineering or an approved engineering technology curriculum.~~	~~0~~
~~C. Dual degree holders.~~ ~~1. Have graduated from a non-ABET accredited undergraduate engineering curriculum of four years or more; and~~ ~~2. Have graduated from a graduate or doctorate engineering curriculum that is ABET accredited at the undergraduate level.~~	~~0~~
~~D. Have graduated from a nonapproved engineering curriculum or from a related science curriculum of four years or more.~~	~~2~~
~~E. Have obtained, by documented academic coursework, the equivalent of education that meets the requirements of ABET accreditation for the baccalaureate engineering technology curricula. Whether an education is considered to be equivalent shall be determined by the judgment of the board.~~	~~6~~

18VAC10-20-200. Requirements for engineer-in-training ~~(EIT)~~ designation.

~~Upon passing the FE exam, an applicant who qualified for the exam under 18VAC10-20-190 A will receive the EIT designation only after he provides verification of his degree to the board. All other applicants will receive the EIT designation upon passing the FE exam. The EIT designation will remain valid indefinitely.~~

In order to receive the EIT designation, applicants shall:

1. Graduate from an engineering program of four years or more accredited by the Engineering Accreditation Commission of ABET (EAC/ABET), graduate from an engineering master's program accredited by EAC/ABET, or meet the requirements of the NCEES Engineering Education Standard;

2. Pass the NCEES Fundamentals of Engineering (FE) exam; and

3. Apply to the board.

18VAC10-20-210. Requirements for ~~the Principles and Practice of Engineering (PE) exam~~ licensure as a professional engineer.

A. In order to be ~~approved to sit for the Principles and Practice of Engineering (PE) exam, applicants shall satisfy one of the subsections (A through F) within this section. Applicants shall~~ licensed as a professional engineer, applicants shall:

1. Satisfy one requirement of subdivisions B 1 through B 4 of this section;

2. Pass the Principles and Practice of Engineering (PE) exam;

3. Meet all the requirements of this chapter; and

4. Apply to and be approved by the board.

B. In general, the required education shall be applied as follows:

EDUCATIONAL REQUIREMENTS	EIT REQUIRED?	NUMBER OF REQUIRED YEARS OF QUALIFYING ENGINEERING EXPERIENCE
~~A.~~ 1. Have graduated from an approved engineering ~~curriculum~~ program.	YES	4
~~B.~~ 2. Dual degree holders. ~~1.~~ a. Have graduated from an ABET-accredited undergraduate engineering ~~curriculum~~ program; and ~~2.~~ b. Have graduated from a doctorate engineering ~~curriculum~~ program that is ABET accredited at the undergraduate level.	NO	4

~~C.~~ 3. Have graduated from a nonapproved engineering ~~curriculum~~ program of four years or more, a related science ~~curriculum~~ program, or an approved engineering technology ~~curriculum~~ program.	YES	6
~~D.~~ 4. Have graduated from a nonapproved engineering technology ~~curriculum~~ program of four years or more.	YES	10
~~E. Have obtained, by documented academic coursework, the equivalent of education that meets that requirements of ABET accreditation for the baccalaureate engineering technology curricula. Whether an education is considered to be equivalent shall be determined by the judgment of the board.~~	~~YES~~	~~10~~
~~F. Have graduated from an engineering, engineering technology, or related science curriculum of four years or more.~~	~~NO~~	~~20~~

18VAC10-20-215. ~~Requirements for the PE license.~~ (Repealed.)

~~An applicant who has satisfied the requirements of this chapter will receive the professional engineer license upon successful completion of the PE exam.~~

18VAC10-20-220. References.

In addition to the requirements found in 18VAC10-20-25, applicants shall satisfy one of the following:

1. An applicant for the ~~Fundamentals of Engineering exam~~ engineer-in-training designation shall provide one reference that indicates ~~his~~ the applicant's personal integrity from one of the following:

a. A professional engineer;

b. The dean, or ~~his~~ the dean's designee, of the engineering school attended by the applicant; or

c. An immediate work supervisor.

2. An applicant for ~~the Principles and Practice of Engineering exam~~ licensure as a professional engineer shall submit three references from professional engineers currently licensed in a state or other jurisdiction of the United States. The applicant shall only submit references given by professional engineers who have personal knowledge of the applicant's competence and integrity relative to his engineering experience.

~~3. An applicant for licensure by comity shall submit three references from professional engineers currently licensed in a state or other jurisdiction of the United States. The applicant shall only submit references given by professional engineers who have personal knowledge of the applicant's competence and integrity relative to his engineering experience.~~

18VAC10-20-230. Education.

A. An applicant who is seeking credit for a degree that is not ABET accredited ~~TAC~~ as ETAC or EAC and was earned from an institution outside the United States~~,~~ shall have the degree authenticated and evaluated by an educational credential evaluation service. ~~If the evaluation is rigorous and meets appropriate ABET accreditation standards, the~~ The board may consider the degree as an approved engineering ~~curriculum or approved engineering technology curriculum~~ program or approved engineering technology program. The board reserves the right to reject~~, for good cause,~~ any evaluation submitted by the applicant.

B. Degrees earned within the United States for any nonapproved engineering ~~curriculum, related science curriculum, or nonapproved engineering technology curriculum~~ program, related science program, or nonapproved engineering technology program of four years or more shall be from an accredited college or university that is approved or

accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.

18VAC10-20-240. Experience.

A. Each applicant shall complete the board's Professional Engineer and Engineer-in-Training Experience Verification Form, documenting all of his engineering experience. The information provided on the form shall clearly describe the engineering work or research that ~~he~~ the applicant personally performed; delineate his role in any group engineering activity; provide an overall description of the nature and scope of his work; and include a detailed description of the engineering work personally performed by him. The experience must be obtained in an organization with an engineering practice and must be verified on the board's experience verification form by a licensed professional engineer in the organization's engineering practice.

B. In general, the required experience shall be applied as follows:

Type of Experience	Qualifying	Nonqualifying
1. Design experience.	A demonstrated use of engineering computation and problem-solving skills.	Drafting of design by others.
~~1.~~ 2. Construction experience.	A demonstrated use of engineering computation and problem-solving skills.	The ~~mere~~ execution as a contractor of work designed by others, the supervision of construction, and similar nonengineering tasks.
~~2.~~ 3. Military experience.	Engineering of a character substantially equivalent to that required in the civilian sector for similar work.	Nonengineering military training and supervision.
~~3.~~ 4. Sales experience.	A demonstrated use of engineering computational and problem-solving skills.	The ~~mere~~ selection of data or equipment from a company catalogue, similar publication, or database.
~~4.~~ 5. Industrial experience.	Work directed toward the identification and solution of practice problems in the applicant's area of engineering specialization including engineering analysis of existing systems or the design of new ones.	The ~~mere~~ performance of maintenance of existing systems, replacement of parts or components, and other nonengineering tasks.
~~5.~~ 6. Graduate or ~~doctorate's~~ doctoral degree.	~~The successful completion of a graduate or doctorate degree in an engineering curriculum may be accepted as one year of equivalent engineering experience credit.~~ Only one year of qualifying experience will be given for any combination of advanced degrees in an engineering program. In addition, if a degree is used to satisfy the education requirement, it cannot also be used toward satisfying the experience requirement.	Research conducted as part of a graduate or ~~doctorate~~ doctoral degree shall not count as additional experience if credit for the degree is granted pursuant to ~~18VAC10-20-190 or~~ 18VAC10-20-210.
~~6.~~ 7. Teaching.	For teaching experience to be considered qualifying by the board, the applicant shall	

	have taught in an engineering ~~curriculum~~ program approved by the board and shall have been employed in the ~~grade~~ level of instructor or higher.	
~~7. Co-op program~~ 8. Co-op or internship.	Engineering experience gained during a ~~board-approved co-op program~~ co-op or internship may be deemed qualifying engineering experience to a maximum of one year of credit.	
~~8.~~ 9. General.		Experience in claims consulting, drafting, estimating, and field surveying.

C. The board, in its sole discretion, may permit partial credit for approved qualifying engineering experience obtained prior to graduation from an engineering ~~curriculum~~ program. Partial credit shall not exceed one-half of that required for any method of initial licensure.

18VAC10-20-260. Examinations.

A. ~~Applications for original licensure or EIT designation shall be received by the board in accordance with the following deadlines~~ Applicants who do not complete their application and receive their designation within the three years from the date that they apply must reapply to the board as follows:

1. ~~Students applying pursuant to 18VAC10-20-190 A shall submit their applications to be received in the board's office no later than 60 days prior to the scheduled exam~~ Applicants who reapply to the board no later than six months after the end of their eligibility may be approved to sit for the exam for an additional three years. The original application requirements shall apply.

2. ~~All other applications shall be received in the board's office no later than 130 days prior to the scheduled exam~~ Applicants who do not meet the criteria of subdivision 1 of this subsection shall reapply to the board and meet all entry requirements current at the time of reapplication.

3. All professional engineer applications shall be received in the board's office no later than 130 days prior to the scheduled exam.

B. The board is a member board of the National Council of Examiners for Engineering and Surveying (NCEES) and is authorized to administer the NCEES exams including the Fundamentals of Engineering exam and the Principles and Practice of Engineering exam.

~~C. Applicants approved by the board to sit for an exam shall register and submit the required exam fee to be received by the board's designee and shall follow NCEES procedures. Applicants not properly registered will not be allowed to sit for the exam.~~

~~D. Applicants eligible for admission to both exams must first successfully complete the Fundamentals of Engineering exam before being admitted to the Principles and Practice of Engineering exam.~~

~~E.~~ C. The exam may not be reviewed by applicants. Unless authorized by NCEES rules and procedures, exam scores are final and are not subject to change.

~~F. Applicants approved to sit for the exam shall be eligible for a period of three years from the date of their initial approval. Applicants who do not pass the exam during their eligibility period are no longer eligible to sit for the exam. To become exam eligible again, applicants shall reapply to the board and meet all current entry requirements at the time of reapplication. In addition to meeting current entry requirements upon reapplication, applicants shall demonstrate successful completion of 16 hours of educational activities that meet the requirements of 18VAC10-20-683 E and F.~~

18VAC10-20-270. Licensure by comity.

A. Applicants holding a valid license to practice engineering in other states or jurisdictions of the United States may be licensed provided they satisfy the provisions of this subsection. Applicants shall:

1. Submit to the board verifiable documentation that the education, experience, and exam requirements by which they were first licensed in the original jurisdiction were substantially equivalent to the requirements in Virginia at the same time;

2. Have passed an exam in another jurisdiction that was substantially equivalent to that approved by the board at the time of their original licensure;

3. Be in good standing in all jurisdictions where they are currently licensed; ~~and~~

4. Submit three references from professional engineers currently licensed in a state or other jurisdiction of the

United States. The applicant shall only submit references given by professional engineers who have personal knowledge of the applicant's competence and integrity relative to his engineering experience; and

5. Satisfy all other applicable requirements of this chapter.

B. Applicants who do not meet the requirements for licensure in Virginia that were in effect at the time of their original licensure shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office.

18VAC10-20-295. Definitions.

"Absolute horizontal positional accuracy" means the value expressed in feet or meters that represents the uncertainty due to systematic and random errors in measurements in the location of any point on a survey relative to the defined datum at the 95% confidence level.

"Approved land surveying experience" means progressive and diversified office and field training and experience under the direct control and personal supervision of a licensed land surveyor. This experience shall have been acquired in positions requiring the exercise of independent judgment, initiative, and professional skill ~~in the office and field and written~~. Written verification of such work experience shall be on forms provided by the board. Experience may be gained either prior to or after education is obtained. Notwithstanding the definition of "approved land surveying experience," the requirements set forth in 18VAC10-20-310 shall not be waived.

"Approved photogrammetric surveying or similar remote sensing technology experience" means progressive and diversified office and field training and experience in photogrammetric surveying or similar remote sensing technology under the direct control and personal supervision of a licensed land surveyor or licensed surveyor photogrammetrist. This experience shall have been acquired in positions requiring the exercise of independent judgment, initiative, and professional skill ~~in the office and field and written~~. Written verification of such work experience shall be on forms provided by the board. Experience may be gained either prior to or after education is obtained. Notwithstanding the definition of "approved photogrammetric surveying or similar remote sensing technology experience," the requirements set forth in 18VAC10-20-310 shall not be waived.

"Relative horizontal positional accuracy" means the value expressed in feet or meters that represents the uncertainty due to random errors in measurements in the location of any point on a survey relative to any other point on the same survey at the 95% confidence level.

18VAC10-20-300. Requirements for surveyor-in-training ~~(SIT)~~ designation.

A. ~~In order to be approved to sit for the Fundamentals of Land Surveying (FLS) exam, applicants must~~ Applicants who do not complete their applications and receive their designations within the three years from the date that they apply must reapply and satisfy one of the following:

1. Be enrolled in ~~a board approved or ABET accredited~~ an EAC/ABET-accredited surveying or surveying technology ~~curriculum~~ program acceptable to the board, have 12 months or less remaining before completion of degree requirements, and provide a certificate of good standing from the dean of the school or ~~his~~ the dean's designee;

2. Have earned an undergraduate degree from ~~a board approved or ABET accredited~~ an EAC/ABET-accredited surveying or surveying technology ~~curriculum~~ program acceptable to the board;

3. Have earned ~~a board approved~~ an undergraduate degree related to surveying acceptable to the board and possess a minimum of one year of approved land surveying experience;

4. Have earned an undergraduate degree in a field unrelated to surveying in conjunction with an additional 30 credit hours in an approved surveying program acceptable to the board and possess a minimum of two years of approved land surveying experience;

5. Have earned a board-approved undergraduate degree in a field unrelated to surveying and possess a minimum of two years of approved land surveying experience;

~~5.~~ 6. Have earned a board-approved associate's degree related to surveying and possess a minimum of four years of approved land surveying experience;

~~6.~~ 7. Have successfully completed a board-approved survey apprenticeship program. The apprenticeship program shall include a minimum of 480 hours of surveying-related classroom instruction with a minimum of six years of approved land surveying experience; or

~~7.~~ 8. Have graduated from high school with evidence of successful completion of courses in algebra, geometry, and trigonometry~~,~~ and possess a minimum of eight years of approved land surveying experience.

B. Applicants seeking approval to sit for the ~~FLS~~ Fundamentals of Surveying (FS) exam pursuant to subdivisions A 3 through ~~7~~ A 8 of this section may apply board-approved college credits to help meet the experience requirement. The maximum rate of college credit substitution for experience shall be one year of experience credit for each 40 credit hours of board-approved college credits completed. College credits applicable toward the completion of any

degree used to satisfy a requirement of subsection A of this section shall not be eligible for experience substitution.

C. ~~An applicant who qualified for the FLS exam under subdivision A 1 of this section will be issued the SIT designation upon the board's receipt of the applicant's degree verification.~~ All ~~other~~ applicants shall receive the SIT designation upon passing the ~~FLS~~ FS exam, receiving approval from a board reviewed application, and meeting all other board requirements.

18VAC10-20-310. Requirements for the land surveyor and surveyor photogrammetrist licenses.

A. Land surveyor license.

1. ~~An SIT~~ A surveyor-in-training (SIT) who has met the requirements of 18VAC10-20-300 and has a minimum of four years of approved land surveying experience shall be approved to sit for ~~an exam in the Principles and Practice of Land Surveying and the Virginia specific land surveying exam~~:

a. The Principles and Practice of Land Surveying exam;

b. The Virginia-specific land surveying exam; and

c. The board supplied exam on regulations.

2. A qualified applicant shall be granted a license to practice land surveying upon passing ~~both exams~~ all three exams and meeting all other board requirements.

B. Surveyor photogrammetrist license.

1. An SIT who has met the requirements of 18VAC10-20-300 and has a minimum of four years of approved photogrammetric surveying or similar remote sensing technology experience shall be approved to sit for ~~the board-approved surveyor photogrammetrist exam and the Virginia specific photogrammetrist exam.~~ the following board-approved exams:

a. The Principles and Practice of Land Surveying;

b. The Virginia-specific land surveying exam; and

c. The board supplied exam on regulations.

2. A qualified applicant shall be granted a license to practice photogrammetric surveying upon passing ~~both exams~~ all three exams and meeting all other board requirements.

18VAC10-20-320. Requirements for the land surveyor B license.

A. An applicant shall:

1. Hold a valid Virginia license as a land surveyor ~~for two years~~;

2. Present satisfactory evidence of a minimum of two years of land surveying experience that is progressive in complexity in land surveyor B land surveying, as provided in § 54.1-408 of the Code of Virginia, under the direct control and personal supervision of a licensed land surveyor B or professional engineer;

3. Present satisfactory evidence of having passed college-level courses in hydrology and hydraulics that are acceptable to the board; and

4. Pass an exam developed by the board.

B. A qualified applicant shall be issued a land surveyor B license upon passing the board-developed exam.

18VAC10-20-330. Education.

An applicant who is seeking credit for a degree earned from an institution outside of the United States shall have his degree authenticated and evaluated by an education evaluation service approved by the board. The board reserves the right to reject~~, for good cause,~~ any evaluation submitted by the applicant. Any cost of evaluation shall be borne by the applicant.

18VAC10-20-340. Experience standards.

In order to demonstrate meeting the experience requirements of 18VAC10-20-300, 18VAC-10-20-310, and 18VAC10-20-320, applicants shall document experience that has been gained under the direct control and personal supervision of a licensed land surveyor or licensed surveyor photogrammetrist on the appropriate board-provided forms. Experience shall be verified by a licensed land surveyor or licensed surveyor photogrammetrist in an organization with a surveying practice and will be evaluated by the board in accordance with 18VAC10-20-35.

18VAC10-20-345. References.

Applicants shall submit three references on a board-approved form with the application, all of which shall be from currently licensed land surveyors in a state or other jurisdiction of the United States. In addition to the requirements found in 18VAC10-20-25, the applicant shall only submit references from licensed land surveyors who have personal knowledge of the applicant's surveying experience that demonstrates the applicant's competence and integrity.

18VAC10-20-350. Examinations.

A. Applications for ~~original~~ initial licensure shall be received by the board in accordance with the following deadlines:

1. ~~Applications~~ Applicants for the ~~SIT~~ surveyor-in-training designation submitted pursuant to 18VAC10-20-300 A ~~shall be received in the board's office no later than 60 days prior to the scheduled exam~~ are eligible to sit for the Fundamentals of Surveying (FS) exam.

2. Upon successful completion of the FS exam, applicants who qualify may apply to sit for the other surveying exams.

3. All ~~other~~ applications for the Virginia-specific exam shall be received in the board's office no later than 130 days prior to the scheduled exam.

B. The board is a member board of the National Council of Examiners for Engineering and Surveying (NCEES) and ~~is authorized to administer the NCEES exams including the Fundamentals of Land Surveying exam and the Principles and Practice of Land Surveying exam. Applicants approved to sit~~ authorizes NCEES to administer the national surveying related exam. Applicants sitting for the exam shall follow NCEES procedures.

C. The ~~exam~~ exams for Virginia board regulations, the Virginia-specific, the surveyor photogrammetrist, and the land surveyor B shall be given at times designated by the board.

D. Unless otherwise stated, applicants approved to sit for an exam must register and submit the required exam fee to be received by the board or the board's designee at a time designated by the board. Applicants not properly registered will not be allowed to sit for the exam.

E. The exam shall not be reviewed by applicants. Unless authorized by NCEES rules and procedures, exam scores are final and are not subject to change.

F. Applicants approved to sit for the exam shall be eligible for a period of three years from the date of their initial approval. Applicants who do not pass the exam during their eligibility period are no longer eligible to sit for the exam. To become exam-eligible again, applicants shall reapply to the board ~~and meet all current entry requirements at the time of reapplication. In addition to meeting the current entry requirements upon reapplication, applicants shall~~, meet all current entry requirements, and demonstrate successful completion of 16 hours of educational activities that meet the requirements of 18VAC10-20-683 E and F.

18VAC10-20-360. Licensure by comity.

A. Applicants holding a valid license to practice land surveying in another state or other jurisdiction of the United States may be licensed as a land surveyor in Virginia. To become licensed, applicants shall:

1. Submit to the board verifiable documentation that the education, experience, and exam requirements by which they were first licensed in the original jurisdiction were substantially equivalent to the requirements in Virginia at the same time;

2. Have passed an exam in another jurisdiction that was substantially equivalent to that approved by the board at the time of the original licensure;

3. Be in good standing in all jurisdictions where licensed;

4. Pass ~~a~~ the Virginia-specific exam; and

5. Satisfy all other applicable requirements of this chapter.

B. Applicants who do not meet the requirements for licensure in Virginia that were in effect at the time of their original licensure shall be required to meet the entry requirements current at the time the completed application for comity is received in the board's office;

C. Applicants holding a current license to practice land surveying or photogrammetric surveying issued by another state or other jurisdiction of the United States may be licensed in Virginia as a surveyor photogrammetrist provided they meet one of the following criteria:

1. Applicants who were originally licensed prior to December 1, 2009, shall meet the requirements of the board's regulations effective December 1, 2008, and pass the Virginia-specific exam; or

2. Applicants who were originally licensed on or after December 1, 2009, shall meet the requirements of the board's regulations effective at the time of original licensure and pass the Virginia-specific exam.

18VAC10-20-370. Minimum standards and procedures for land boundary surveying practice.

A. The minimum standards and procedures set forth in this section are to be used for land boundary surveys performed in the Commonwealth of Virginia. The application of the professional's seal, signature, and date as required by these regulations shall be evidence that the land boundary survey is correct to the best of the professional's knowledge, information, and belief~~,~~ and complies with the minimum standards and procedures set forth in this chapter.

B. Research procedure. The professional shall search the land records for the proper description of the land to be surveyed and obtain the description of adjoining ~~land(s)~~ land as it pertains to the common boundaries. The professional shall have the additional responsibility to utilize such other available data pertinent to the survey being performed from any other known sources. Evidence found~~,~~ from all known sources, including evidence found in the field, shall be carefully compared in order to aid in the establishment of the correct boundaries of the land being surveyed. The professional shall clearly identify on the plats, maps, and reports inconsistencies found in the research of common boundaries between the land being surveyed and the adjoining ~~land(s)~~ land. It is not the intent of this regulation to require the professional to research the question of title or encumbrances on the land involved.

C. Minimum field procedures.

1. Angular measurement. Angle measurements made for traverse or land boundary survey lines will be made by

using a properly adjusted transit-type instrument ~~which~~ that allows a direct reading to a minimum accuracy of ~~30~~ 20 seconds of arc or ~~metric~~ equivalent. The number of angles turned at a given station or corner will be the number ~~which~~ that, in the judgment of the professional, can be used to substantiate the average true angle considering the condition of the instrument being used and the existing field conditions.

2. Linear measurement. Distance measurement for the lines of traverse or lines of the land boundary survey shall be made (i) with metal tapes ~~which~~ that have been checked and are properly calibrated as to incremental distances~~,~~ or (ii) with properly calibrated electronic distance measuring equipment following instructions and procedures established by the manufacturer of such equipment. All linear measurements shall be reduced to the horizontal plane, and other necessary corrections shall be performed before using such linear measurements for computing purposes.

3. Field traverse and land boundary closure and accuracy standards. For a land boundary survey located in a rural area, the maximum permissible error of closure for a field traverse shall be one part in 10,000 (1/10,000). The attendant angular closure shall be that which will sustain the one part in 10,000 (1/10,000) maximum error of closure. For a land boundary survey located in an urban area, the maximum permissible error of closure for a traverse shall be one part in 20,000 (1/20,000). The attendant angular closure shall be that which will sustain the one part in 20,000 (1/20,000) maximum error of closure.

The maximum permissible positional uncertainty based on the 95% confidence level of any independent boundary corner or independent point located on a boundary that has been established by utilizing global positioning systems shall not exceed the positional tolerance of 0.07 feet (or 20 mm + 50 ppm).

4. Monumentation. As a requisite for completion of the work product, each land boundary survey of a tract or parcel of land shall be monumented with objects made of permanent material at all corners and changes of direction on the land boundary with the exceptions of meanders, such as meanders of streams, tidelands, lakes, swamps and prescriptive rights-of-way, and each such monument, other than a natural monument, shall, when physically feasible, be identified by a temporary witness marker. Where it is not physically feasible to set actual corners, appropriate reference monuments shall be set, preferably on line, and the location of each shall be shown on the plat or map of the land boundary.

All boundaries, both exterior and interior, of the original survey for any division or partition of land shall be monumented in accordance with the provisions of this subdivision, when such monumentation is not otherwise regulated by the provisions of a local subdivision ordinance.

5. For land boundary surveys providing for a division when only the division, in lieu of the entire parcel, is being surveyed, any new corners established along existing property lines shall require that those existing property lines be established through their entire length. This shall include the recovery or reestablishment of the existing corners for each end of the existing property lines.

D. Office procedures.

1. Computations. The computation of field work data shall be accomplished by using the mathematical routines that produce closures and mathematical results that can be compared with descriptions and data of record. Such computations shall be used to determine the final land boundary of the land involved.

2. Plats and maps. The following information shall be shown on all plats and maps used to depict the results of the land boundary survey:

a. The title of the land boundary plat identifying the land surveyed and showing the district, town, and county or city in which the land is located and scale of drawing.

b. The name of the owner of record and recording references.

c. Names of all adjoining owners of record with recording references, or with subdivision name and lot designations and recording references.

d. Inconsistencies found in the research of common boundaries between the land being surveyed and the adjoining ~~land(s)~~ land. The inconsistencies shall be clearly noted by the professional.

e. Names of highways and roads with route number~~,~~ and widths of right-of-way~~,~~ or distance to the center of the physical pavement and pavement width, name of railroads, streams adjoining, crossing, or in close proximity to the boundary and other prominent or well-known objects that are informative as to the location of the land boundary.

f. A distance to the nearest road intersection~~,~~ or prominent or well-known object. In cases of remote areas, a scaled position with the latitude and longitude must be provided.

g. Items crossing any property lines such as, but not limited to, physical encroachments~~,~~ and evidence of easements such as utilities and other physical features pertinent to the boundary of the property.

h. Bearings of all property lines and meanders to nearest ~~10 seconds~~ one second of arc or ~~metric~~ equivalent.

i. Adequate curve data to accomplish mathematical closures.

j. Distances of all property lines and meanders to the nearest one hundredth (.01) of a foot or ~~metric~~ equivalent.

k. Pursuant to subdivision C 5 of this section, the bearing and distances from the new corners to the existing corners on each end of the existing property lines.

l. For property located in rural areas, area to the nearest hundredth (.01) of an acre or ~~metric~~ equivalent.

m. For property located in urban areas, area to the nearest square foot or thousandth (0.001) of an acre or ~~metric~~ equivalent.

n. North arrow and source of meridian used for the survey.

o. For interior surveys, a reference bearing and distance to a property corner of an adjoining owner or other prominent object, including~~, but not limited to,~~ intersecting streets or roads.

p. Tax map designation or geographic parcel identification number if available, for surveyed parcel and adjoining parcels.

q. Description of each monument found and each monument set by the professional.

r. A statement that the land boundary survey shown is based on a current field survey or a compilation from deeds, plats, surveys by others, or combination thereof. If the land boundary shown is a compilation from deeds or plats, or a survey by others, the title of the plat shall clearly depict that the plat does not represent a current land boundary survey.

s. A statement as to whether a current title report has been furnished to the professional.

t. A statement as to whether any or all easements, encroachments, and improvements are shown on the plat.

u. Name ~~and~~, address ~~of~~, and contact information for the land surveyor or the registered business.

v. The professional's seal, signature and date.

3. Metes and bounds description. The professional shall prepare a metes and bounds description in narrative form, if requested by the client or ~~his~~ the client's agent, for completion of any newly performed land boundary survey. The description shall reflect all metes and bounds, the area of the property described, all pertinent monumentation, names of record owners or other appropriate identification of all adjoiners, and any other data or information deemed as warranted to properly describe the property. Customarily, the metes and bounds shall be recited in a clockwise direction around the property. The professional shall clearly identify in the metes and bounds description any inconsistencies found in the research of common boundaries between land being surveyed and the adjoining land ~~or lands~~. For subdivisions, the professional shall prepare a metes and bounds description in narrative form for only the exterior boundaries of the property.

No metes and bounds description shall be required for the verification or resetting of the corners of a lot or other parcel of land in accordance with a previously performed land boundary survey, such as a lot in a subdivision where it is unnecessary to revise the record boundaries of the lot.

18VAC10-20-380. Minimum standards and procedures for surveys determining the location of physical improvements; field procedures; office procedures.

A. The following minimum standards and procedures are to be used for surveys determining the location of physical improvements on any parcel of land or lot containing less than two acres or ~~metric~~ equivalent (sometimes also known as "building location survey," "house location surveys," "physical surveys," ~~and the like)~~ etc.) in the Commonwealth of Virginia. The application of the professional's seal, signature, and date as required by ~~these regulations~~ this chapter shall be evidence that the survey determining the location of physical improvements is correct to the best of the professional's knowledge, information, and belief~~,~~ and complies with the minimum standards and procedures set forth in this chapter.

B. The professional shall determine the position of the lot or parcel of land in accordance with the intent of the original survey and shall set or verify permanent monumentation at each corner of the property, consistent with the monumentation provisions of subdivision C 4 of 18VAC10-20-370. All such monumentation, other than natural monumentation shall, when physically feasible, be identified by temporary witness markers.

When the professional finds discrepancies of sufficient magnitude to warrant, in his opinion, the performance of a land boundary survey (pursuant to the provisions of 18VAC10-20-370), he shall so inform the client or the client's agent that such land boundary survey is deemed warranted as a requisite to completion of the physical improvements survey.

The location of the following shall be determined in the field:

1. Fences in near proximity to the land boundary lines and other fences ~~which~~ that may reflect lines of occupancy or possession.

2. Other physical improvements on the property and all man-made or installed structures, including buildings, stoops, porches, chimneys, visible evidence of

underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), utility lines, and poles.

3. Cemeteries, if known or disclosed in the process of performing the survey; roads or ~~travelways~~ traveled ways crossing the property ~~which~~ that serve other properties; and streams, creeks, and other defined drainage ways.

4. Other visible evidence of physical encroachment on the property.

C. The plat reflecting the work product shall be drawn to scale and shall show the following, unless requested otherwise by the client and so noted on the plat:

1. The bearings and distances for the boundaries and the area of the lot or parcel of land shall be shown in accordance with record data, unless a current, new land boundary survey has been performed in conjunction with the physical improvements survey. If needed to produce a closed polygon, the meander lines necessary to verify locations of streams, tidelands, lakes, and swamps shall be shown. All bearings shall be shown in a clockwise direction, unless otherwise indicated.

2. North arrow, in accordance with record data.

3. Fences in the near proximity to the land boundary lines and other fences ~~which~~ that may reflect lines of occupancy or possession.

4. Improvements and other pertinent features on the property as located in the field pursuant to subsection B of this section.

5. Physical encroachment, including fences, across a property line shall be identified and dimensioned with respect to the property line.

6. The closest dimension (to the nearest 0.1 foot or ~~metric~~ equivalent) from the front property line, side property line, and if pertinent, rear property line to the principal walls of each building. Also, all principal building dimensions (to the nearest 0.1 foot or ~~metric~~ equivalent).

7. Building street address numbers, as displayed on the premises, or so noted if no numbers are displayed.

8. Stoops, decks, porches, chimneys, balconies, floor projections, and other similar type features.

9. Street ~~name(s)~~ names, as posted or currently identified~~,~~ and as per record data~~,~~ if different from posted name.

10. Distance to nearest intersection from a property corner, based upon record data. If not available from record data, distance to nearest intersection may be determined from best available data, and so qualified.

11. Building restriction or setback ~~line(s)~~ lines per restrictive covenants~~,~~ if shown or noted on the record subdivision plat.

12. The caption or title of the plat shall include the type of survey performed; lot number, block number, section number, and name of subdivision, as appropriate, or if not in a subdivision, the ~~name(s)~~ names of the record owner; town ~~or,~~ county, or city; date of survey; and scale of drawing.

13. Adjoining property identification.

14. Easements and other encumbrances set forth on the record subdivision plat, and those otherwise known to the professional.

15. A statement as to whether or not a current title report has been furnished to the professional.

16. Inconsistencies found in the research or field work of common boundaries between the land being surveyed and the adjoining land ~~or lands~~ shall be clearly noted.

17. Name, address, and contact information for the individual or entity for whom the survey is being performed.

18. Professional's seal, signature, and date.

~~18.~~ 19. Name ~~and~~, address ~~of~~, and contact information for the land surveyor or registered business.

D. In performing a physical improvements survey, a professional shall not be required to set corner monumentation on any property when:

1. It is otherwise required to be set pursuant to the provisions of a local subdivision ordinance as mandated by § 15.2-2240 of the Code of Virginia or by subdivision A 7 of § 15.2-2241 of the Code of Virginia;

2. ~~Its~~ Eventual placement is covered by a surety bond, cash escrow, set-aside letter, letter of credit, or other performance guaranty; or

3. Exempt by § 54.1-407 of the Code of Virginia.

E. A professional performing a physical improvements survey when monumentation is not required as stated in subsection D of this section shall clearly note on the plat "no corner markers set," the reason why it is not required, and the name of guarantors.

18VAC10-20-382. Minimum standards and procedures for surveys determining topography; field procedures; office procedures.

A. The minimum standards and procedures set forth in this section are to be used for topographic surveys performed in the Commonwealth of Virginia pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia. The application of the professional's seal, signature, and date as

required by ~~these regulations~~ this chapter shall be evidence that the topographic survey is correct to the best of the professional's knowledge and belief and complies with the minimum standards and procedures.

B. Minimum field and office procedures. The following information shall be shown on, or contained in, all plats, maps, or digital geospatial data including metadata used to depict the results of the topographic survey:

1. Physical improvements on the property, all man-made or installed structures, as well as visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), and utility lines and poles shall be shown or depicted when they are visible based on the methodology and scale. If the methodology or scale prevents depiction of the ~~above~~ improvements as described in this subdivision, then notice shall be clearly stated on or contained in the map, plat, or digital geospatial data including metadata indicating the improvements that are not depicted.

2. Elevations shall be provided as spot elevations, contours, or digital terrain models.

3. Onsite, or in close proximity, ~~bench mark(s)~~ benchmarks shall be established with reference to vertical datum, preferably North American Vertical Datum (NAVD), and shown in the correct location.

4. The title of the topographic survey identifying the land surveyed and showing the state, county, or city in which property is located.

5. Name, address, and contact information of the individual or entity for whom the survey is being performed.

6. Name, address, and contact information for the land surveyor or registered business.

7. Date, graphic scale, numerical scale, and contour interval of plat, map, or digital geospatial data including metadata.

~~7.~~ 8. North arrow and source of meridian used for the survey.

~~8.~~ 9. Names or route numbers of highways, streets and named waterways shall be shown.

~~9.~~ 10. The horizontal and vertical unit of measurement, coordinate system, and data, including adjustments if applicable.

~~10.~~ 11. A statement, in the following form, shall be shown on or contained in plats, maps, or digital geospatial data including metadata:

This _____ (provide description of the project) was completed under the direct and responsible charge of _____ (Name of Professional) from an actual ☐ Ground or ☐ ~~Airborne~~ Remote Sensing (check the one that is applicable) survey made under my supervision; that the imagery and/or original data was obtained on _____ (Date); and that this plat, map, or digital geospatial data including metadata meets minimum accuracy standards unless otherwise noted.

C. Minimum positional accuracies shall be met in accordance with the tables in subdivisions 1, 2, and 3 of this subsection. These tables are not intended to be acceptable in all situations, and the professional shall be responsible to perform the work to the appropriate quality and extent that is prudent or warranted under the existing field conditions and circumstances. Metric or other unit of measurements shall meet an equivalent positional accuracy. Map or plat scales, or contour intervals, other than those defined in these tables shall meet an equivalent positional accuracy. The minimum positional accuracy tables are as follows:

1. Scale and contour interval combinations.

Map or Plat Scale	Contour Interval
1" = 20'	1 or 2 feet
1" = 30'	1 or 2 feet
1" = 40'	1 or 2 feet
1" = 50'	1 or 2 feet
1" = 100'	1 or 2 feet
1" = 200'	2, 4, or 5 feet
1" = 400'	4, 5, or 10 feet

2. Vertical accuracy standards.

	Contours - Vertical Positional Accuracy	Spot Elevations - Vertical Positional Accuracy
Contour line 1' interval	± 0.60 feet	± 0.30 feet
Contour line 2' interval	± 1.19 feet	± 0.60 feet
Contour line 4' interval	± 2.38 feet	± 1.19 feet
Contour line 5' interval	± 2.98 feet	± 1.49 feet
Contour line 10' interval	± 5.96 feet	± 2.98 feet

Positional Accuracy is given at the 95% confidence level.

3. Horizontal accuracy standards.

Well defined ground points - Horizontal (Radial) Positional Accuracy

Map or Plat Scale	Absolute Horizontal Positional Accuracy	Relative Horizontal Positional Accuracy
1" = 20'	± 0.8 feet	± 0.20 feet
1" = 30'	± 1.1 feet	± 0.30 feet
1" = 40'	± 1.5 feet	± 0.40 feet
1" = 50'	± 1.9 feet	± 0.50 feet
1" = 100'	± 3.8 feet	± 1.00 feet
1" = 200'	± 7.6 feet	± 2.00 feet
1" = 400'	± 15.2 feet	± 4.00 feet

Positional Accuracy is given at the 95% confidence level.

18VAC10-20-392. Photogrammetric surveys or similar remote sensing technology.

The use of photogrammetric methods or similar remote sensing technology to perform any part of the practice of land surveying as defined in Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia~~,~~ shall be performed under the direct control and supervision of a licensed land surveyor or a licensed surveyor photogrammetrist.

18VAC10-20-420. Requirements for licensure.

~~A.~~ Applicants for licensure as a landscape architect shall satisfy the requirements of ~~subsection B or C~~ subdivision 1 or 2 of this section.

~~B.~~ 1. An applicant who has graduated from a landscape architecture ~~curriculum~~ program accredited by the Landscape Architectural Accreditation Board (LAAB) shall have:

~~1.~~ a. Obtained a minimum of 36 months of experience as follows:

~~a.~~ (1) A minimum of 12 months of experience under the direct control and personal supervision of a licensed or certified landscape architect; ~~and~~

~~b.~~ (2) The remaining 24 months of experience under the direct control and personal supervision of a licensed or certified landscape architect or a licensed architect, professional engineer, or land surveyor~~,~~ in accordance with the Landscape Architects Experience Credit Table; ~~and~~ or

(3) In lieu of the provision in subdivisions 1 a (1) and 1 a (2) of this section, a minimum of 48 months of experience under the direct control and personal supervision of a licensed architect, professional engineer, or land surveyor; and

~~2.~~ b. Passed all sections of the Council of Landscape Architectural Registration Board (CLARB)-prepared exam.

~~C.~~ 2. Applicants who have not graduated from a LAAB-accredited landscape architecture ~~curriculum~~ program shall have obtained a minimum of eight years of combined education and work experience in accordance with this subsection.

~~1.~~ a. Only semester and quarter hours with passing ~~grades~~ scores shall be accepted. Credit shall be calculated as follows:

~~a.~~ (1) 32 semester credit hours or 48 quarter credit hours shall be worth one year.

~~b.~~ (2) Fractions greater than or equal to one half-year, but less than one year, will be counted as one-half year.

~~c.~~ (3) Fractions smaller than one half-year will not be counted.

~~2.~~ b. The maximum years indicated in subdivisions a through d of the ~~LANDSCAPE ARCHITECTS EDUCATION CREDIT TABLE~~ Landscape Architects Education Credit Table shall apply regardless of the length of the degree program.

~~3.~~ c. All applicants shall have a minimum of two years of experience under the direct control and personal supervision of a licensed or certified landscape architect.

~~4.~~ d. Education and experience shall be evaluated against the ~~LANDSCAPE ARCHITECTS EDUCATION CREDIT TABLE~~ Landscape Architects Education Credit Table and the ~~LANDSCAPE ARCHITECTS EXPERIENCE CREDIT TABLE~~ Landscape Architects Experience Credit Table to determine if an applicant has met the minimum eight years required in this subsection.

LANDSCAPE ARCHITECTS EDUCATION CREDIT TABLE

Categories	Values	Examples
~~a.~~ (1) Credits completed applicable toward a LAAB-accredited degree.	Credit shall be given at the rate of 100% with a maximum of four years allowable.	An applicant has 86 semester hours of credit. Calculation: ♦ 86/32 = 2.6875 years

~~b.~~ (2) A degree in landscape architecture, or credits completed applicable toward a degree in landscape architecture, from a non-LAAB-accredited ~~curriculum~~ program.		♦ 100% credit for a maximum of four years (2.6875 x 100% = 2.6875 years). ♦ 0.6875 is ≥ 0.5 years, which is worth 0.5 years. Final result: 86 semester hours equals 2.5 years.
~~c.~~ (3) A degree, or credits completed applicable toward a degree, in an allied professional discipline approved by the board (i.e., architecture, civil engineering, environmental science).	Credit shall be given at the rate of 75% for the first two years and 100% for succeeding years with a maximum of three years allowable.	An applicant has 101 semester hours of credit. Calculation: ♦ 101/32 = 3.15625 years ♦ 75% credit for the first two years (2 x 75% = 1.5 years). ♦ 100% credit for succeeding years (1.15625 x 100% = 1.15625 years). ♦ 1.5 + 1.15625 = 2.65625 years. ♦ 0.65625 is ≥ 0.5 years, which is worth 0.5 years. Final result: 101 semester hours equals 2.5 years.
~~d.~~ (4) Any other undergraduate degree or credits completed applicable toward that degree.	Credit shall be given at the rate of 50% for the first two years and 75% for succeeding years with a maximum of two years allowable.	An applicant has 95 semester hours of credit. Calculation: ♦ 95/32 = 2.96875 years ♦ 50% credit for the first two years (2 x 50%= 1 year). ♦ 75% credit for succeeding years (.96875 x 75%= .72656 years). ♦ 1 +.72656 = 1.72656 years. ♦ 0.72656 is ≥ 0.5 years, which is worth 0.5 years. Final result: 95 semester hours equals 1.5 years.

LANDSCAPE ARCHITECTS EXPERIENCE CREDIT TABLE

Categories	Values	Examples
~~e.~~ (5) Experience gained under the direct control and personal supervision of a licensed or certified landscape architect.	Credit shall be given at the rate of 100% of work experience gained with no maximum.	An applicant worked under a landscape architect for 3.7 years. Calculation: 3.7 years x 100% = 3.7 years (no maximum). Final result: An applicant with 3.7 years of work experience will be credited for the entire 3.7 years.
~~f.~~ (6) Experience gained under the direct control and personal supervision of a licensed architect, professional engineer, or land surveyor.	Credit shall be given at the rate of 50% of work experience gained with a maximum of four years allowable.	An applicant has worked under a land surveyor for eight years or more. Calculation: 8 years x 50% = 4 years. Final result: eight years or more of experience is worth only four years based on the maximum allowable.

18VAC10-20-425. References.

In addition to the requirements found in 18VAC10-20-25, applicants shall submit three references with the application,

~~each from a currently licensed~~ one of which shall be from a currently licensed, certified, or registered landscape architect in ~~another~~ a state or other jurisdiction of the United States. An applicant shall only submit references from ~~landscape architects who have~~ a licensed professional engineer, architect, land surveyor, or a landscape architect who has personal knowledge of ~~his~~ the applicant's competence and integrity relative to his landscape architectural experience.

18VAC10-20-430. Experience standard.

Qualifying landscape architectural training and experience shall be progressive in complexity and based on knowledge of natural, physical and mathematical sciences, and the principles and methodology of landscape architecture.

The experience must be obtained in an organization with a landscape architecture practice and must be verified on the board experience verification form by a licensed landscape architect, professional engineer, architect, or land surveyor in the organization's practice.

18VAC10-20-440. Examination.

A. Applicants with a LAAB-accredited degree may be approved to sit for the exam prior to completing the 36-month experience requirement contained in subdivision 1 a of 18VAC10-20-420 ~~B 1~~.

B. The Virginia board is a member of the Council of Landscape Architectural Registration Boards (CLARB) and is authorized to ~~administer the CLARB~~ make available the CLARB prepared exams. All applicants for original licensure in Virginia are required to pass the CLARB-prepared exam.

C. Applicants approved to sit for the exam shall register and submit the required exam fee to be received in the board office, or by the board's designee. Applicants not properly registered will not be allowed to sit for the exam.

D. Grading of the exam shall be in accordance with the national grading procedures ~~established~~ administered by CLARB. The board shall ~~adopt~~ utilize the scoring procedures recommended by CLARB.

E. Applicants shall be advised only of their passing or failing score and the CLARB minimum passing score.

F. ~~Upon written request to the board within 30 days of receiving exam results, applicants will be permitted to view the performance problems contained within the section that they failed. Exam appeals are permitted in accordance with the CLARB score verification process.~~ The board may approve transfer credits for parts of the exam taken and passed in accordance with national standards.

G. Applicants approved to sit for the exam shall be eligible for a period of three years from the date of their initial approval. Applicants who do not pass all sections of the exam during their eligibility period are no longer eligible to sit for the exam. To become exam-eligible again, applicants shall reapply to the board as follows:

1. Applicants who have taken at least one section of the exam and who reapply to the board no later than six months after the end of their eligibility may be approved to sit for the exam for an additional three years. The original application requirements shall apply.

2. Applicants who do not meet the criteria of subdivision 1 of this subsection shall reapply to the board and meet all entry requirements current at the time of reapplication.

18VAC10-20-450. Licensure by comity.

A. Applicants with a valid license in good standing to practice landscape architecture issued by another state or other jurisdiction of the United States may be licensed by the board without further examination provided they:

1. Were issued the original license based on requirements that do not conflict with and that are substantially equivalent to the board's regulations that were in effect at the time of original licensure; ~~and~~

2. Passed an exam in another jurisdiction that was substantially equivalent to that approved by the board at that time~~;~~ or met the regulations in effect at that time; and

3. Possess a CLARB certificate.

B. Applicants who do not qualify under subsection A of this section shall be required to meet current entry requirements at the time the application for comity is received in the board's office.

Part VII
Qualifications for Certifying of Interior Designers

18VAC10-20-460. Definitions.

The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings.

"CIDA" means the Council for Interior Design Accreditation ~~(CIDA)~~, formerly known as the Foundation of Interior Design Education Research (FIDER).

"Diversified experience" includes the identification, research, and creative solution of problems pertaining to the function and quality of the interior environment including~~,~~ ~~but not limited to,~~ code analysis, fire safety consideration, and barrier free evaluations that relate to the health, safety, and welfare of the public.

"Monitored experience" means diversified experience in interior design under the direct control and personal supervision of a certified or licensed interior designer, ~~an~~ architect, or ~~a~~ professional engineer.

"Professional program approved by the board" means an evaluated degree or combination of evaluated degrees as follows:

1. A minimum of an undergraduate degree in an interior design program that is deemed by the board to be substantially equivalent to an undergraduate degree in interior design from a CIDA-accredited ~~institution at the time of the applicant's graduation~~ program; ~~or~~

2. A graduate degree from a CIDA-accredited program; or

3. A graduate degree in interior design plus an undergraduate degree that ~~is a~~ in combination are deemed by the board to be substantially equivalent to an undergraduate degree program from a CIDA-accredited ~~institution~~ program at the time of the applicant's graduation.

For the purposes of this definition, a degree program that met CIDA accreditation requirements not later than two years after the date of the applicant's graduation shall be determined to be CIDA accredited.

18VAC10-20-490. Requirements for certification.

A. ~~Applicants shall meet one of the following education requirements:~~ A degree from a professional program approved by the board.

~~1. Have graduated from a program accredited by CIDA;~~

~~2. Have graduated from a program accredited by an organization equivalent to CIDA; or~~

~~3. Have graduated from a professional degree program approved by the board.~~

B. The board reserves the right to reject any evaluation submitted. Any costs attributable to evaluation shall be borne by the applicant.

C. Applicants shall possess a minimum of two years of monitored experience. Any monitored experience gained under the direct control and personal supervision of a professional engineer shall be reduced by 50% and shall not account for more than six months of the two years required by this subsection.

~~C.~~ D. Applicants shall have passed the board-approved exam and provide documentation acceptable to the board verifying that the exam has been passed.

~~D. Any cost of evaluation of degrees shall be borne by the applicant. The board reserves the right to reject, for good cause, any evaluation submitted.~~

18VAC10-20-495. Examination.

A. The National Council of Interior Design Qualification ~~(NCIDQ)~~ exam is approved by the board.

B. Applicants shall apply directly to ~~NCIDQ~~ the Council for Interior Design Qualifications for the exam.

18VAC10-20-505. Certification by comity.

~~An applicant with a valid license or certificate in another state or country or the District of Columbia may be issued a certificate if he provides satisfactory evidence to the board that: 1. The~~ Applicants who hold a license or certificate in good standing in another jurisdiction of the United States or province of Canada may be issued a certificate if the board is provided with satisfactory evidence that the license or certificate was issued based on qualifications equal to those required by this chapter as of the date the application is received by the board~~; and 2. The license or certificate is in good standing~~.

Part VIII
Qualifications for Registration as a Professional Corporation

18VAC10-20-510. ~~Definitions.~~ (Repealed.)

~~Section 13.1-543 of the Code of Virginia provides the definition of the following term:~~

~~Professional Corporation ("P.C.")~~

~~The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:~~

~~"Employee" of a corporation, for purposes of stock ownership, is a person regularly employed by the corporation who devotes 60% or more of his gainfully employed time to that of the corporation.~~

~~"Registration" means a certificate of authority issued by the board to transact business in Virginia pursuant to § 13.1-549 of the Code of Virginia.~~

18VAC10-20-520. ~~Fee schedule.~~ (Repealed.)

~~All fees are nonrefundable and shall not be prorated.~~

~~Application for professional corporation registration~~	~~$30~~
~~Application for professional corporation branch office registration~~	~~$30~~
~~Renewal of professional corporation registration~~	~~$25~~
~~Renewal of professional corporation branch office registration~~	~~$25~~

18VAC10-20-530. ~~Application requirements.~~ (Repealed.)

~~A. All applicants shall be incorporated in the Commonwealth of Virginia or, if a foreign professional corporation, shall have a certificate of authority to conduct business in Virginia from the State Corporation Commission in accordance with § 13.1-544.2 of the Code of Virginia. The corporation shall be in good standing with the State~~

Corporation Commission at the time of application to the board office and at all times when the board registration is in effect.

B. Each application shall include:

1. For applicants incorporated in Virginia, the applicant shall provide a copy of its articles of incorporation, bylaws, or charter, and the certificate of incorporation issued by the Virginia State Corporation Commission.

2. For applicants incorporated in a state other than Virginia, the applicant shall provide a copy of its articles of incorporation, bylaws, or charter, the certificate of incorporation issued by the foreign state of incorporation, and the certificate of authority issued by the Virginia State Corporation Commission.

C. Articles of incorporation or bylaws.

1. The articles of incorporation or bylaws shall specifically state that cumulative voting is prohibited.

2. The bylaws shall affirmatively state that the professional corporation meets the requirements of § 13.1-549 of the Code of Virginia.

3. The bylaws shall state that nonlicensed or noncertified individuals will not have a voice or standing in any matter affecting the practice of the corporation requiring professional expertise, in any matter constituting professional practice, or both.

D. The board of directors shall meet the following requirements:

1. A corporation may not elect to its board of directors more than one-third of its members who are employees of the corporation and are not authorized to render professional services;

2. At least two-thirds of the board of directors shall be licensed to render the services of an architect, professional engineer, land surveyor, or landscape architect or be duly certified to use the title of certified interior designer, or any combination thereof; and

3. At least one director, currently licensed or certified in each profession offered or practiced, shall be resident at the business to provide effective supervision and control of the final professional product.

E. Joint ownership of stock. Any type of joint ownership of the stock of the corporation is prohibited. Ownership of stock by nonlicensed or noncertified employees shall not entitle those employees to vote in any matter affecting the practice of the professions herein regulated.

F. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.

G. Any branch office offering or rendering professional services shall complete a branch office registration application from the board. Each branch office shall have a responsible person resident at the branch office for each profession offered or rendered.

18VAC10-20-550. ~~Foreign corporations.~~ (Repealed.)

A. The bylaws shall state that the foreign corporation's activities in Virginia shall be limited to rendering the services of architects, professional engineers, land surveyors, landscape architects, certified interior designers, or any combination thereof.

B. Foreign corporations shall not be required to have two-thirds of its stockholders be licensed or certified to perform professional services in Virginia but must meet all other requirements of this chapter.

C. Foreign corporations shall provide the name, address, and Virginia license or certificate number of each stockholder or employee of the corporation who will be offering or providing the professional services in Virginia.

18VAC10-20-560. ~~Amendments and changes.~~ (Repealed.)

A. Amendments to charter, articles of incorporation or bylaws. A corporation holding a registration to practice in one or in any combination of the professions covered in these regulations shall file with the board, within 30 days of its adoption, a copy of any amendment to the articles of incorporation, bylaws or charter.

B. Change in directors or shareholders. The following shall apply to the board issued registration upon the event of any change in directors or shareholders whether the change is temporary or permanent, caused by death, resignation, or otherwise:

1. The professional corporation shall notify the board within 30 days of any change in its directors or shareholders;

2. In the event of a change in the corporate directors or shareholders, the board-issued registration shall be limited to the professional practices permitted by those pertinent licenses or certificates held by the remaining directors and shareholders of the corporation unless an employee of the firm holds the appropriate license or certificate and is competent to render such professional services; and

3. In the event that a change results in the professional corporation's noncompliance with the requirements of this chapter and applicable statutes relating to ownership of capital stock or composition of the board of directors, the board-issued registration shall be automatically suspended until such time as the corporation comes into compliance with this chapter.

C. Change of name, address and place of business. The professional corporation shall notify the board, in writing,

within 30 days of any of the following changes at each place of business:

1. Any change of name (including assumed names), address, place of business in Virginia, or responsible person of the profession offered or practiced; and

2. Any change in the employment status of a licensed or certified employee responsible for professional practice.

Part IX
Qualifications for Registration as a Professional Limited Liability Company

18VAC10-20-570. Definitions. (Repealed.)

A. Section 13.1-1102 of the Code of Virginia provides the definition of the following term:

Professional Limited Liability Company ("P.L.C.," "PLC," "P.L.L.C.," or "PLLC")

B. The following words, terms, and phrases when used in this part shall have the meanings ascribed to them except where the context clearly indicates or requires different meanings:

"Manager" is a person or persons designated by the members of a limited liability company to manage the professional limited liability company as provided in the articles of organization or an operating agreement, and who is duly licensed or otherwise legally authorized to render one or more of the professional services of architects, professional engineers, land surveyors, landscape architects, or certified interior designers in the Commonwealth of Virginia.

"Member" means an individual or professional business entity that owns an interest in a professional limited liability company.

"Registration" means a certificate of authority issued by the board to transact business in Virginia pursuant to § 13.1-1111 of the Code of Virginia.

18VAC10-20-575. Registration required. (Repealed.)

Any professional limited liability company offering or rendering professional services in the Commonwealth of Virginia shall register with the board. Professional services shall include architecture, engineering, land surveying, landscape architecture, and interior design.

18VAC10-20-580. Fee schedule. (Repealed.)

All fees are nonrefundable and shall not be prorated.

Application for professional limited liability company registration	$100
Application for professional limited liability company branch office registration	$50
Renewal of professional limited liability company registration	$50
Renewal of professional limited liability company branch office registration	$50

18VAC10-20-590. Application requirements. (Repealed.)

A. All applicants shall have a certificate of organization in the Commonwealth of Virginia or, if a foreign professional limited liability company, shall have a certificate of authority to conduct business in Virginia from the State Corporation Commission, in accordance with § 13.1-1105 of the Code of Virginia. The company shall be in good standing with the State Corporation Commission at the time of application to the board and at all times when the board registration is in effect.

B. Each application shall include a copy of the articles of organization or operating agreement. Applications shall also include additional information as follows:

1. Applicants organized as a professional limited liability company in Virginia shall provide a copy of the certificate of organization.

2. Applicants organized as a professional limited liability company in a state other than Virginia shall provide a copy of the certificate of authority issued by the Virginia State Corporation Commission.

C. Articles of organization or operating agreement.

1. The articles of organization or operating agreement shall state the specific purpose of the professional limited liability company.

2. The articles of organization or operating agreement shall affirmatively state that the professional limited liability company meets the requirements of § 13.1-1111 of the Code of Virginia.

3. The articles of organization or operating agreement shall attest that all members, managers, employees and agents who render professional services of architects, professional engineers, land surveyors, or landscape architects, or use the title of certified interior designers, are duly licensed or certified to provide those services.

4. The person executing the affidavit shall sign it and state beneath his signature his name and the capacity in which he signs. If the person signing the affidavit is not a manager of the PLLC, the affidavit shall also state that the individual has been authorized by the members of the PLLC to execute the affidavit for the benefit of the company.

D. Management of the PLLC.

1. Pursuant to § 13.1-1118 of the Code of Virginia, unless the articles of organization or operating agreement

provides for management of the PLLC by a manager or managers, management shall be vested in its members.

2. Any manager or member must be licensed to render the same professional services within the Commonwealth for which the company was formed. These members or managers shall be the only members or managers authorized to supervise and direct the provision of professional services within the Commonwealth.

3. At least one member or manager currently licensed or certified in each profession offered or practiced shall be resident at the business to provide effective supervision and control of the final professional product.

E. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.

F. Any branch office offering or rendering professional services shall complete a branch office registration application from the board. Each branch office shall have a resident responsible person at the branch office for each profession offered or rendered.

18VAC10-20-610. ~~Foreign professional limited liability companies.~~ (Repealed.)

A. The articles of organization or operating agreement shall state that the PLLC's activities in Virginia shall be limited to rendering the professional services of architects, professional engineers, land surveyors, landscape architects, certified interior designers, or any combination thereof.

B. The foreign PLLC shall meet every requirement of § 13.1-1111 of the Code of Virginia except for the requirement that two-thirds of its members and managers be licensed or certified to perform the professional service in this Commonwealth.

C. The PLLC shall provide the name, address, and Virginia license or certificate number of each manager or member who will be providing the professional service(s) in Virginia.

18VAC10-20-620. ~~Amendments and changes.~~ (Repealed.)

A. A PLLC holding a registration to practice in any combination of the professions covered in these regulations shall file with the board a copy of any amendment to the articles of organization, operating agreement, or certificate of organization within 30 days of its adoption.

B. Change of managers or members of the PLLC. The following shall apply to the board issued registration upon the event of any change in members or managers whether the change is temporary or permanent, caused by death, resignation, or otherwise:

1. The PLLC shall notify the board within 30 days of any change in its members or managers;

2. In the event of a change in the members or managers, the board issued registration shall be limited to the professional practices consistent with the licenses or certificates held by the remaining members or managers of the PLLC unless an employee of the firm holds the appropriate license or certificate and is competent to render such professional services; and

3. In the event that a change results in the PLLC's noncompliance with the requirements of this chapter and applicable statutes relating to ownership of the membership interests, the board issued registration shall be automatically suspended until such time as the PLLC comes into compliance with this chapter.

C. Change of name, address, or place of business. The PLLC shall notify the board, in writing, within 30 days of any of the following changes at each place of business:

1. Any change of name (including assumed names), address, place of business in Virginia, or responsible person of the profession offered or practiced; and

2. Any change in the employment status of a licensed or certified employee responsible for professional practice.

~~Part X~~ Part VIII

Qualifications for Registration as a Business Entity ~~Other Than a Professional Corporation and Professional Limited Liability Company~~

18VAC10-20-627. Registration required.

Any business entity~~, which is not a professional corporation or professional limited liability company but is offering or practicing architectural, engineering, surveying, landscape architectural, or interior design~~ offering or rendering professional services in the Commonwealth of Virginia~~,~~ shall register with the board. Professional services shall include architecture, engineering, land surveying, landscape architecture, or interior design.

18VAC10-20-630. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application for business entity registration	~~$100~~ $90
Application for business entity branch office registration	~~$50~~ $45
Renewal of business entity registration	~~$50~~ $45
Renewal of business entity branch office registration	~~$50~~ $35

18VAC10-20-640. Application requirements.

A. In accordance with § 54.1-411 of the Code of Virginia, any entity that is not a PC, PLLC, or sole proprietorship that does not employ other individuals for which licensing is

~~required shall register with the board. This includes, but is not limited to, any corporation, partnership, limited liability company, joint ventures, or nonprofit.~~

~~B. Partnerships. Applications for registration as a partnership shall include a copy of the partnership agreement, which shall state that all professional services of the partnership shall be under the direct control and personal supervision of a licensed or certified professional.~~

~~C. Limited partnerships. Applications for registration as a limited partnership shall include:~~

~~1. A copy of the partnership agreement that shall state that all professional services of the limited partnership shall be under the direct control and personal supervision of duly licensed or certified professionals; and~~

~~2. A copy of the certificate of limited partnership issued by the Virginia State Corporation Commission for applicants organized in Virginia or, if organized as a foreign limited partnership, a certification of registration issued by the Virginia State Corporation Commission.~~

~~D. Corporations. Applications for registration as a corporation shall include:~~

~~1. A copy of the articles of incorporation, bylaws, or charter; and~~

~~2. A copy of the certificate of incorporation issued by the Virginia State Corporation Commission if organized in Virginia or, if organized as a foreign corporation, a copy of the certificate of authority issued by the Virginia State Corporation Commission.~~

~~E. Limited liability companies. Applications for registration as a limited liability company shall include a copy of the certificate of organization issued by the State Corporation Commission if organized in Virginia or, if organized as a foreign limited liability company, a copy of the certificate of authority issued by the Virginia State Corporation Commission.~~

~~F. If architectural, engineering, surveying, landscape architectural, or interior design services are offered or rendered in a branch office, a separate branch office designation form shall be completed for each branch office. Resident responsible persons shall be designated for each branch office in accordance with this chapter.~~

~~G. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.~~

A. All applicants shall be appropriately credentialed to do business in the Commonwealth of Virginia by the State Corporation Commission in accordance with the Code of Virginia. The business entity shall be in good standing with the State Corporation Commission at the time of application to the board office, at the time of board approval, and at all times when the board registration is in effect.

B. The name of the business and any assumed, fictitious, trading as, or doing business as names of the firm shall be disclosed on the application.

C. Any branch office offering or rendering professional services shall complete a branch office registration application from the board. Each branch office shall have a responsible person resident at the branch office for each professional offered or rendered.

18VAC10-20-650. Registration certification.

The application shall contain an affidavit by an authorized official in the ~~corporation, partnership, sole proprietorship, limited liability company, or other~~ business entity ~~unit~~ that the practice of architecture, engineering, land surveying, landscape architecture, or ~~certified~~ interior design to be done by that entity shall be under the direct control and personal supervision of the licensed or certified full-time employees or licensed or certified resident principals identified in the application as responsible persons for the practice. In addition, the licensed or certified employees or principals responsible for the practice shall sign their names indicating that they are responsible persons who are resident, and that they understand and shall comply with all statutes and regulations of the board.

Part ~~XI~~ IX
Renewal and Reinstatement

18VAC10-20-670. Renewal.

A. ~~Individuals and organizations~~ Regulants shall not practice with an expired license, certificate, or registration. The following timeframes shall determine the required fees for renewal based on the date the fee is received in the board's office:

1. If the renewal fee is received by the board by the expiration date of the license, certificate, or registration, no additional fee shall be required to renew.

2. If the renewal fee is not received by the board within 30 days following the expiration date of the branch office registration, the registration shall be subject to the requirements of 18VAC10-20-680.

3. If the renewal fee is not received by the board within 30 days following the expiration date of the license, certificate, or nonbranch office registration, a $25 late fee shall be required in addition to the renewal fee.

4. If the renewal fee and applicable late fee are not received by the board within six months following the expiration date of the license, certificate, or nonbranch office registration, the reinstatement fee shall be required pursuant to 18VAC10-20-680.

B. Upon receipt of the required fee, licenses, certificates, and registrations not currently sanctioned by the board shall be renewed for a two-year period from their previous expiration date.

C. Branch offices shall not renew or reinstate until the main office registration is properly renewed or reinstated.

D. The board may deny renewal of a license, certificate, or registration for the same reasons as it may refuse initial licensure, certification, or registration or for the same reasons that it may discipline a regulant for noncompliance with the standards of practice and conduct as well as the continuing education requirements contained in this chapter. The regulant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

E. By submitting the renewal fee, the regulant is certifying continued compliance with the standards of practice and conduct as established by the board. In addition, by submitting the renewal fee, licensees are certifying their compliance with the continuing education requirements as contained in this chapter.

F. Failure to receive a renewal notice shall not relieve the regulant of the responsibility to renew. In the absence of a renewal notice, the regulant may submit a copy of the license, certificate, or registration with the required fee for renewal.

G. A license, certificate, or registration that is renewed shall be regarded as having been current without interruption and under the authority of the board.

H. Failure to pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in a delay or withholding of services provided by the department such as, but not limited to, renewal, reinstatement, processing a new application, or exam administration.

18VAC10-20-680. Reinstatement.

A. Applicants whose license, certificate, or ~~nonbranch~~ main office registration has expired for more than six months, and applicants whose branch office registration has expired for more than 30 days, shall be required to submit a reinstatement application, which shall be evaluated by the board to determine if the applicant remains qualified to be a regulant of the board.

B. Applicants whose license or certificate has expired for more than five years shall be required to reapply for licensure or certification on the initial application and document experience from the date of expiration of the license or certificate to the present.

C. The board may require an exam, additional continuing education, or experience for architects, professional engineers, land surveyors, landscape architects, and interior designers whose license or certificate has expired for more than five years.

D. The board may deny reinstatement of a license, certificate, or registration for the same reasons as it may refuse initial licensure, certification, or registration or for the same reasons that it may discipline a regulant for noncompliance with the standards of practice and conduct, as well as the continuing education requirements, contained in this chapter. The applicant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

~~C.~~ E. The date the reinstatement fee is received in the board's office shall determine the amount to be paid pursuant to the following requirements:

1. Branch office registrations that have expired for more than 30 days shall require a reinstatement fee that shall equal the renewal fee plus $30.

2. Licenses, certificates, and ~~nonbranch~~ main office registrations that have expired for more than six months, but less than five years, shall require a reinstatement fee that shall equal the renewal fee plus $100.

3. Licenses, certificates, and ~~nonbranch~~ main office registrations that have expired for more than five years shall require a reinstatement fee that shall equal the renewal fee plus $250.

~~D. Architects, professional engineers, land surveyors, surveyor photogrammetrists, and landscape architects applying for reinstatement shall provide evidence of compliance with the continuing education requirements of this chapter.~~

~~E. The board may require an exam for architects, professional engineers, land surveyors, surveyor photogrammetrists, landscape architects, and interior designers whose license or certificate has expired for more than five years.~~

F. Licensees shall remain under the disciplinary authority of the board at all times, regardless of whether the license is reinstated, pursuant to § 54.1-405 of the Code of Virginia.

G. A certificate or registration holder who reinstates shall be regarded as having been current and without interruption and under the authority of the board.

H. Failure to pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in a delay or withholding of services provided by the department such as, but not limited to, renewal, reinstatement, processing a new application, or exam administration.

18VAC10-20-683. Continuing education requirements for renewal or reinstatement.

A. Licensees are required to complete ~~16 hours of~~ continuing education (CE) pursuant to the provisions of ~~this section~~ § 54.1-404.2 of the Code of Virginia for any renewal or reinstatement.

B. CE for renewal shall be completed during the two-year license period immediately prior to the expiration date of the license and shall be valid for that renewal only; additional hours ~~over 16 hours~~ shall not be valid for subsequent renewal.

C. CE for reinstatement shall be completed during the two years immediately prior to the date of the board's receipt of a reinstatement application and shall be valid for that reinstatement only; additional hours ~~over 16 hours~~ shall not be valid for subsequent ~~reinstatement~~ renewal.

D. Licensees shall maintain records of completion of CE used to renew a license for three years from the date of expiration of the license. Licensees shall provide those records to the board or its authorized agents upon request.

E. CE activities completed by licensees may be accepted by the board provided the activity:

1. Consists of content and subject matter related to the practice of the profession;

2. Has a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the licensee's area of practice and may be in areas related to business practices, including project management, risk management, ~~and~~ ethics, and public health, safety, and welfare that have demonstrated relevance to the licensee's area of practice as defined in § 54.1-400 of the Code of Virginia;

3. Is taught by instructors who are competent in the subject matter, either by education or experience, for those activities involving an interaction with an instructor;

4. If self-directed, contains an assessment by the sponsor at the conclusion of the activity that verifies that the licensee has successfully achieved the purpose and objective of the activity; and

5. Results in documentation that verifies the licensee's successful completion of the activity.

F. Computation of credit.

1. Fifty contact minutes shall equal one hour of CE. For activities that consist of segments that are less than 50 minutes, those segments shall be totaled for computation of CE for that activity.

2. One semester hour of college credit shall equal 15 hours of CE and one-quarter hour of college credit shall equal 10 hours of CE.

3. The number of hours required to successfully complete any CE activity must have been ~~predetermined~~ determined by the sponsor. A licensee shall not claim more credit for any CE activity than the number of hours that was predetermined by the sponsor at the time the activity was completed.

4. CE may be granted for the initial development, substantial updating, or the initial teaching of a CE activity that meets the requirements of this chapter at twice the amount of credit that participants receive. CE claimed pursuant to this subdivision shall not be claimed for subsequent offerings of the same activity.

5. A licensee applying for renewal shall not receive credit for completing a CE activity with the same content more than once during the two years prior to license expiration.

6. A licensee applying for reinstatement shall not receive credit more than once for completing a CE activity with the same content during the two years immediately prior to the date of the board's receipt of his reinstatement application.

G. The board may periodically conduct a random audit of its licensees who have applied for renewal to determine compliance. Licensees who are selected for audit shall provide all documentation of all CE activities utilized to renew their license within 21 calendar days of the date of the board's notification of audit.

H. If the board determines that CE was not obtained properly to renew or reinstate a license, the licensee shall be required to make up the deficiency to satisfy the ~~16 hour~~ CE requirement for that license renewal or reinstatement. Any CE activity used to satisfy the deficiency shall not be applied to his current license CE requirement or any subsequent renewal or reinstatement.

18VAC10-20-740. Professional responsibility.

A. Unless exempt by statute, all architectural, engineering, land surveying, landscape architectural, and interior design work must be completed by a professional or a person performing the work who is under the direct control and personal supervision of a professional.

B. A professional shall be able to clearly define his scope and degree of direct control and personal supervision, clearly define how it was exercised, and demonstrate that he was responsible within that capacity for the work that he has sealed, signed, and dated. For the work prepared under his supervision, a professional shall:

1. Have detailed professional knowledge of the work;

2. Exercise the degree of direct control over work that includes:

a. Having control over decisions on technical matters of policy and design;

b. Personally making professional decisions or the review and approval of proposed decisions prior to implementation, including the consideration of alternatives to be investigated and compared for designed work, whenever professional decisions are made that could affect the health, safety, and welfare of the public involving permanent or temporary work;

c. The selection or development of design standards and materials to be used; and

d. Determining the validity and applicability of recommendations prior to incorporation into the work, including the qualifications of those making the recommendations;

3. Have exercised his professional judgment in ~~all~~ professional matters that are embodied in the work and the drawings, specifications, or other documents involved in the work; and

4. Have exercised critical examination and evaluation of an employee's, consultant's, subcontractor's, or project team member's work product, during and after preparation, for purposes of compliance with applicable laws, codes, ordinances, regulations, and usual and customary standards of care pertaining to professional practice.

C. The regulant shall not knowingly associate in a business venture with~~,~~ or permit the use of his name~~,~~ by any person or firm when there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating statutes or any of these regulations.

D. A regulant who has ~~direct~~ knowledge ~~or reason to believe~~ that any ~~individual or firm~~ person may have violated or may currently be violating any of these provisions, or the provisions of Chapters 7 (§ 13.1-542.1 et seq.) and 13 (§ 13.1-1100 et seq.) of Title 13.1 or Chapters 1 (§ 54.1-100 et seq.) through 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, shall ~~immediately~~ inform the board in writing and shall cooperate in furnishing any further information or assistance that may be required by the board or any of its agents.

E. Upon request by the board or any of its agents, the regulant shall produce any plan, plat, document, sketch, book, record, or copy thereof concerning a transaction covered by this chapter and shall cooperate in the investigation of a complaint filed with the board against a regulant.

F. Except as authorized by 18VAC10-20-760 A 2, a regulant shall not utilize the design, drawings, specifications, or work of another regulant to complete or to replicate any work without the written consent of the person or organization that owns the design, drawings, specifications, or work.

G. Utilization and modification of work.

1. A regulant who utilizes the designs, drawings, specifications, or work of another regulant pursuant to subsection F of this section or 18VAC10-20-760 A 2, or who modifies any plats or surveys, shall conduct a thorough review of the work to verify that it has been accomplished to the same extent that would have been done under the direct control and personal supervision of the regulant affixing the professional seal, signature, and date. The regulant shall assume full responsibility for the utilization of any unsealed work or any changes or modifications to previously sealed work.

2. ~~The information contained in recorded plats or surveys may be utilized by another regulant without permission.~~ Information from recorded plats or surveys may be utilized without permission. However, the modification of the actual recorded plat or survey is prohibited without written permission of the regulant.

18VAC10-20-750. ~~Good standing.~~ (Repealed.)

~~A. A regulant licensed, certified, or registered to practice architecture, engineering, land surveying, landscape architecture, or interior design in any jurisdiction shall be in good standing in every jurisdiction where licensed, certified, or registered.~~

~~B. A regulant who has received a reprimand, civil penalty, or monetary penalty, or whose license, certificate or registration is revoked, suspended, denied, or surrendered as a result of a disciplinary action by any jurisdiction, shall notify the board of such action within 30 days.~~

18VAC10-20-760. Use of seal.

A. Affixing of a professional seal, signature, and date shall indicate that the professional has exercised direct control and personal supervision over the work to which it is affixed. Affixing of the seal, signature, and date also indicates the professional's acceptance of responsibility for the work shown thereon.

1. No professional shall affix a seal, signature, and date or certification to ~~a plan, plat, document, sketch, or other work~~ plans, plats, documents, drawings, or other works constituting the practice of the professions regulated that has been prepared by an unlicensed or uncertified person unless such ~~work was~~ works were performed under the direct control and personal supervision of the professional while the unlicensed or uncertified person was an employee of the same firm as the professional or was under written contract to the same firm that employs the professional.

2. If the original professional of record is no longer able to seal, sign, and date completed professional work, such work may be sealed, signed, and dated by another qualified professional pursuant to the standards established in 18VAC10-20-740 G 1.

B. Documents to be sealed.

1. All final documents, including ~~original cover sheet of plans, plats, documents, sketches, technical reports, and specifications, and each original sheet of plans,~~ cover sheet of plans, plats, documents, drawings, technical reports, and specifications, and each sheet of plans or plats, or drawings prepared by the professional, or someone under his direct control and personal supervision, shall be sealed, signed, and dated by the professional. All final documents shall also bear the professional's name or firm name, address, and project name. ~~Final documents are completed documents or copies submitted on a client's behalf for approval by authorities, for construction, or for recordation.~~

2. For projects involving multiple ~~sets of plans from multiple professionals~~ professional services ~~involved~~ in the same project, each professional shall seal, sign, and date the final documents for the work component that he completed or that was completed under his direct control and personal supervision. The professional responsible for the compilation of the project shall seal, sign, and date the cover sheet of the aggregate collection of final documents for the project.

C. An electronic seal, signature, and date are permitted to be used in lieu of an original seal, signature, and date when the following criteria, and all other requirements of this section, are met:

1. It is a unique identification of the professional;

2. It is verifiable; and

3. It is under the professional's direct control.

D. Incomplete plans, plats, documents, and ~~sketches~~ drawings, whether advance or preliminary copies, shall be so identified on the ~~plan, plat, document, or sketch~~ plans, plats, documents, or drawings and need not be sealed, signed, or dated. Advance or preliminary copies of incomplete plans, plats, documents, and ~~sketches~~ drawings, must be clearly identified as not complete but need not be sealed, signed, or dated.

E. All work performed by a professional who is licensed or certified by this board, including work that is exempt from licensure pursuant to § 54.1-402 of the Code of Virginia, shall be sealed, signed, and dated pursuant to subsection B of this section.

F. The original seal shall conform in detail and size to the design illustrated ~~below~~ in this subsection and shall be two inches in diameter. The designs ~~below~~ illustrated may not be shown to scale:















*The number referred to is the last six-digit number as shown on the license or certificate. The number is permanent. Leading zeros contained in the six-digit number may be omitted from the seal.

18VAC10-20-790. Sanctions.

A license, certificate, or registration shall not be sanctioned unless a majority of the eligible voting members of the entire board vote for the action. The board may discipline or sanction any regulant if the board finds that:

1. The regulant failed to maintain good moral character pursuant to the definition in 18VAC10-20-10;

2. The license, certification, or registration was obtained or renewed through fraud or misrepresentation;

3. The regulant has been found guilty ~~by the board, or~~ by a court of competent jurisdiction~~,~~ of any material misrepresentation in the course of professional practice~~,~~ or has been convicted, pleaded guilty, or has been found guilty, regardless of adjudication or deferred adjudication, of any felony or misdemeanor that, in the judgment of the board, adversely affects the regulant's ability to perform satisfactorily within the regulated discipline. ~~Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter.~~ The board shall review the conviction pursuant to the provisions of § 54.1-204 of the Code of Virginia;

4. The regulant ~~is guilty of~~ has committed acts constituting professional incompetence, negligence, or gross negligence;

5. The regulant has abused drugs or alcohol to the extent that professional competence is adversely affected;

6. The regulant fails to comply, or misrepresents any information pertaining to their compliance, with any of the continuing education requirements as contained in this chapter;

7. The regulant violates any standard of practice and conduct as defined in this chapter; ~~or~~

8. The regulant violates or induces others to violate any provision of Chapters 7 (§ 13.1-542.1 et seq.) and 13 (§ 13.1-1100 et seq.) of Title 13.1 or Chapters 1 (§ 54.1-100 et seq.) through 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, or any other statute applicable to the practice of the professions regulated by this chapter~~.~~;

9. The regulant has been disciplined by any county, city, town, state, or federal governing body. For purposes of this section "discipline" means reprimand; civil or monetary penalty; probation, suspension, or revocation of a license; or cease and desist order. The board will review such discipline before taking any disciplinary action of its own; or

10. The regulant fails to notify the board within 30 days of having been disciplined by any county, city, town, state, or federal governing body as stipulated in subdivision 9 of this section.

18VAC10-20-795. Change of address.

All regulants shall notify the board ~~in writing of any change of address~~ of a change of mailing address on the designated address change form within 30 days of making the change. When submitting a change of address, regulants holding more than one license, certificate, or registration shall inform the board of each affected by the change. A post office box will not be accepted in lieu of a physical address.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC10-20)

License/Certificate Renewal Form (Architect, Professional Engineer, Land Surveyor, Surveyor Photogrammetrist, Landscape Architect, Interior Designer), A415-04REN-v1 (eff. 10/2011)

~~Architect License Application (Architect Information Sheet), 0401LIC (rev. 4/2012)~~

Architect License Application, 0401LIC_2018, (rev. 7/2018)

Verification of Architect Examination & Licensure Form, 0401ELV (rev. 4/2012)

~~Architect Experience Verification Form, 0401EXP (rev. 4/2012)~~

Architect Experience Verification Form, 0401LIC_2018, (rev. 7/2018)

Architect Client Experience Verification Form, 0401CEXP (rev. 4/2012)

Architect Degree Verification Form, 0401DEG (rev. 4/2012)

~~Architect Reference Form, A416-0401REF-v1 (eff. 1/2016)~~

~~Architect License Reinstatement Application, 0401REI (rev. 4/2012)~~

~~Professional Engineer License Application (Professional Engineer Information Sheet), 0402LIC (rev. 4/2012)~~

~~Professional Engineer Reference Form, A416-0402REF-v1 (eff. 1/2016)~~

~~Professional Engineer License Reinstatement Application, 0402REI (rev. 4/2012)~~

Architect Reference Form, 0401REF_2018, (rev. 7/2018)

Architect License Reinstatement Application, 0401REI_2018, (rev. 7/2018)

Professional Engineer License Application, 0402LIC_2018, (rev. 7/2018)

Professional Engineer Reference Form, 0402REF_2018, (rev. 7/2018)

Professional Engineer License Reinstatement Application, 0402REI_2018, (rev. 7/2018)

Professional Engineer & Engineer-in-Training Degree Verification Form, 0402_20DEG (rev. 4/2012)

~~Professional Engineer & Engineer in Training Experience Verification Form, A416-0402_20EXP-v1 (eff. 11/2013)~~

Professional Engineer & Engineer-in-Training Experience Verification Form, 0402_20EXP_2018, (rev. 7/2018)

Engineer Verification of Examination and Licensure Form, 0402_20ELV (rev. 4/2012)

~~Engineer in Training Designation Application, (Engineer in Training Information Sheet) A416-0420DES-v2 (rev. 12/2013)~~

~~Engineer In Training Reference Form, A416-0420REF-v1 (eff. 1/2016)~~

Engineer-in-Training Designation Application, 0420DES_2018, (rev. 7/2018)

Engineer-in-Training Reference Form, 0420REF_2018, (rev. 7/2018)

Course Requirements for Engineering Technology Program, 0402CREQ (rev. 4/2012)

~~Land Surveyor License Application (Land Surveyor Information Sheet), 0403LIC (rev. 4/2012)~~

~~Land Surveyor License Reinstatement Application, 0403REI (rev. 4/2012)~~

~~Land Surveyor B License Reinstatement Application, 0404REI (rev. 4/2012)~~

~~Land Surveyor B License Application (Land Surveyor B Information Sheet), 0404LIC (rev. 4/2012)~~

Land Surveyor License Application, 0403LIC_2018, (rev. 7/2018)

Land Surveyor License Reinstatement Application, 0403REI_2018, (rev. 7/2018)

Land Surveyor B License Application, 0404LIC_2018, (rev. 7/2018)

Land Surveyor B License Reinstatement Application, 0404REI_2018, (rev. 7/2018)

Land Surveyor & Surveyor-in-Training Degree Verification Form, 0403_30DEG (rev. 4/2012)

Land Surveyor Verification of Examination and Licensure Form, 0403_30ELV (rev. 4/2012)

~~Land Surveyor & Surveyor in Training Experience Verification Form, 0403_30EXP (rev. 4/2012)~~

~~Surveyor Photogrammetrist License Application (Surveyor Photogrammetrist Information Sheet), 0408LIC (rev. 4/2012)~~

~~Surveyor Photogrammetrist Reference Form, 0408REF (rev. 9/2014)~~

~~Surveyor Photogrammetrist Experience Verification Form, 0408EXP (rev. 4/2012)~~

~~Surveyor Photogrammetrist License Reinstatement Application, 0408REI (rev. 4/2012)~~

Land Surveyor & Surveyor-in-Training Experience Verification Form, 0403_30EXP_2018, (rev. 7/2018)

Surveyor Photogrammetrist License Application, 0408LIC_2018, (rev. 7/2018)

Surveyor Photogrammetrist Reference Form, 0408REF_2018, (rev. 7/2018)

Surveyor Photogrammetrist Experience Verification Form, 0408EXP_2018, (rev. 7/2018)

Surveyor Photogrammetrist License Reinstatement Application, 0408REI_2018, (rev. 7/2018)

Surveyor Photogrammetrist Degree Verification Form, 0408DEG (rev. 4/2012)

Surveyor Photogrammetrist Verification of Examination and Licensure Form, 0408elvf (eff. 4/2012)

~~Surveyor In Training Designation Application (Surveyor in Training Information Sheet), A416-0430DES v3 (rev. 12/2013)~~

~~Landscape Architect License Application (Landscape Architect Information Sheet), 0406LIC (rev. 9/2014)~~

~~Landscape Architect Reference Form, A416-0406REF v1 (eff. 1/2016)~~

Surveyor-in-Training Designation Application, 0430DES_2018, (rev. 7/2018)

Landscape Architect License Application, 0406LIC_2018, (rev. 7/2018)

Landscape Architects Reference Form, 0406REF_2018, (rev. 7/2018)

Verification of Landscape Architect Examination and Licensure Form, 0406ELV (rev. 4/2012)

Landscape Architect Experience Verification Form for Examination and Comity Applicants, 0406EXP (rev. 4/2012)

Landscape Architect Degree Verification Form, 0406DEG (rev. 4/2012)

~~Landscape Architect License Reinstatement Application, 0406REI (rev. 4/2012)~~

~~Interior Designer Certificate Application, (Interior Designer Information Sheet) 0412CERT (rev. 4/2012)~~

Landscape Architect License Reinstatement Application, 0406REI_2018, (rev. 7/2018)

Interior Designer Certificate Application, 0412CERT_2018, (rev. 7/2018)

Verification of Interior Designer Examination and Certification Form, 0412ELV (rev. 4/2012)

Interior Designer Degree Verification Form, 0412DEG (rev. 4/2012)

~~Interior Designer Experience Verification Form, 0412EXP (rev. 4/2012)~~

~~Interior Designer Certificate Reinstatement Application, 0412REI (rev. 4/2012)~~

Interior Designer Experience Verification Form, 0412EXP_2018, (rev. 7/2018)

Interior Designer Certificate Reinstatement Application, 0412REI_2018, (rev. 7/2018)

Professional Corporation Registration Application (Professional Corporation Information Sheet), 04PCREG (rev. 4/2012)

Professional Corporation Branch Office Registration Application, 04BRPCREG (rev. 4/2012)

~~Business Entity Registration Application (Business Entity Information Sheet) 04BUSREG, (rev. 4/2012)~~

~~Business Entity Branch Office Registration Application, 04BRBUSREG (rev. 4/2012)~~

Business Entity Registration Application (Business Entity Information Sheet) 04BUSREG_2018, (rev. 7/2018)

Business Entity Branch Office Registration Application, 04BRBUSREG_2018, (rev. 7/2018)

Professional Limited Liability Company Registration Application (Professional Limited Liability Company Information Sheet) 04PLCREG (rev. 4/2012)

Professional Limited Liability Company Branch Office Registration Application, 04BRPLCREG (rev. 4/2012)

Criminal Conviction Reporting Form, A406-01CCR-v1 (eff. 5/2015)

Disciplinary Action Reporting Form, A406-01DAR-v1 (eff. 5/2015)

Criminal Conviction - Supplemental Form, Requesting an Informal Fact Finding (IFF) Conference, A713-01IFF-v1 (eff. 1/2016)

VA.R. Doc. No. R17-5025; Filed June 5, 2019, 6:08 p.m.

BOARD OF DENTISTRY

Forms

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

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

18VAC60-25. Regulations Governing the Practice of Dental Hygiene.

18VAC60-30. Regulations Governing the Practice of Dental Assistants.

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

FORMS (18VAC60-21)

~~Application for a Faculty License to Teach Dentistry (rev. 1/2017)~~

~~Instructions and Application for Registration for Volunteer Dental Practice (rev. 6/2017)~~

~~Instructions and Application for a Temporary Resident's License (rev. 1/2017)~~

~~Application for a Temporary Dental Permit (rev. 5/2017)~~

~~Application for a Permit to Administer Moderate Sedation (rev. 12/2018)~~

~~Application for a Permit to Administer Deep Sedation/General Anesthesia (rev. 5/2017)~~

~~Application for Reinstatement of a Permit to Administer Moderate Sedation or Deep Sedation/General Anesthesia (rev. 12/2018)~~

~~Application for Certification to Perform Cosmetic Procedures (rev. 12/2015)~~

~~Application for Reinstatement of Certification to Perform Cosmetic Procedures (rev. 12/2015)~~

~~Instructions and Application for Restricted Volunteer Dental License (rev. 1/2017)~~

~~Application for Oral and Maxillofacial Surgeon Registration of Practice (rev. 12/2015)~~

~~Application for Reinstatement of Oral and Maxillofacial Surgeon Registration of Practice (rev. 12/2015)~~

~~Application for Registration of a Mobile Dental Facility or Portable Dental Operation (rev. 12/2015)~~

~~Instructions and Application for Reactivation of Dental License (rev. 1/2017)~~

~~Instructions and Application for Reinstatement of Dental License (rev. 6/2017)~~

~~Instructions for Filing Online Application for Licensure by Examination or Credentials for Dentists (rev. 6/2016)~~

Instructions and Application for a Faculty License to Teach Dentistry (rev. 5/2019)

Instructions and Application for Registration for Volunteer Dental Practice (rev. 5/2019)

Instructions and Application for a Temporary Resident's License (rev. 5/2019)

Instructions and Application for a Temporary Dental Permit (rev. 5/2019)

Instructions and Application for a Permit to Administer Moderate Sedation (rev. 5/2019)

Instructions and Application for a Permit to Administer Deep Sedation/General Anesthesia (rev. 5/2019)

Instructions and Application for Reinstatement of a Permit to Administer Moderate Sedation or Deep Sedation/General Anesthesia (rev. 5/2019)

Instructions and Application for Certification to Perform Cosmetic Procedures (rev. 5/2019)

Instructions and Application for for Reinstatement of Certification to Perform Cosmetic Procedures (rev. 5/2019)

Instructions and Application for Restricted Volunteer Dental License (rev. 5/2019)

Instructions and Application for Oral and Maxillofacial Surgeon Registration of Practice (rev. 5/2019)

Instructions and Application for Reinstatement of Oral and Maxillofacial Surgeon Registration of Practice (rev. 5/2019)

Instructions and Application for Registration of a Mobile Dental Facility or Portable Dental Operation (rev. 5/2019)

Instructions and Application for Reactivation of Dental License (rev. 5/2019)

Instructions and Application for Reinstatement of Dental License (rev. 5/2019)

Instructions for Filing Online Application for Licensure by Examination or Credentials for Dentists (rev. 4/2019)

FORMS (18VAC60-25)

~~Instructions for Filing Online Application for Licensure by Examination or Credentials for Dental Hygienists (rev. 6/2017)~~

~~Instructions and Application for Registration for Dental Hygiene Volunteer Practice (undated)~~

~~Instructions and Application for Reactivation of Dental Hygienist License (rev. 1/2017)~~

~~Instructions and Application for Reinstatement of Dental Hygienist License (rev. 6/2017)~~

~~Instructions and Application for Restricted Volunteer Dental Hygiene License (rev. 1/2017)~~

~~Application for a Faculty License to Teach Dental Hygiene (rev. 1/2017)~~

~~Application for a Temporary Dental Hygiene Permit (rev. 2/2018)~~

Instructions for Filing Online Application for Licensure by Examination or Credentials for Dental Hygienists (rev. 5/2019)

Instructions and Application for Registration for Dental Hygiene Volunteer Practice (rev. 5/2019)

Instructions and Application for Reactivation of Dental Hygienist (rev. 5/2019)

Instructions and Application for Reinstatement of Dental Hygienist License (rev. 5/2019)

Instructions and Application for Restricted Volunteer Dental Hygiene License (rev. 5/2019)

Instructions and Application for a Faculty License to Teach Dental Hygiene (rev. 5/2019)

Instructions and Application for a Temporary Dental Hygiene Permit (rev. 5/2019)

Continuing Education (CE) Credit Form for Volunteer Practice (rev. 5/2019)

FORMS (18VAC60-30)

~~Instructions and Application for Registration as a Dental Assistant II (rev. 1/2017)~~

~~Instructions and Application for Reactivation of Dental Assistant II Registration (rev. 1/2017)~~

~~Instructions and Application for Reinstatement of Dental Assistant II Registration (rev. 1/2017)~~

Instructions and Application for Registration as a Dental Assistant II (rev.5/2019)

Instructions and Application Reactivation of Dental Assistant II Registration (rev.5/2019)

Instructions and Application for Reinstatement of Dental Assistant II Registration (rev.5/2019)

VA.R. Doc. No. R19-6039; Filed June 7, 2019, 2:42 p.m.

DEPARTMENT OF HEALTH PROFESSIONS

Forms

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

Title of Regulation: **18VAC76-20. Regulations Governing the Prescription Monitoring Program.**

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

FORMS (18VAC76-20)

~~Request for a Waiver or an Exemption from Reporting (rev. 9/07).~~

~~Request to Register as an Authorized Agent to Receive Information from the Prescription Monitoring Program (rev. 7/08).~~

~~Pharmacist Request for Information (rev. 7/08).~~

~~Recipient Request for Discretionary Disclosure of Information from the Prescription Monitoring Program (rev. 7/08).~~

~~Prescriber Request for Discretionary Disclosure of Information from Prescription Monitoring Program (rev. 3/2009).~~

~~Request for Disclosure of Information from Prescription Monitoring Program (DHP/DDU/MEO) (rev. 7/08).~~

~~Request for Disclosure of Information from Prescription Monitoring Program for Research (rev. 7/08).~~

~~Regulatory Authority Request for Discretionary Disclosure of Information from the Prescription Monitoring Program (rev. 7/08).~~

~~Investigation under Virginia Medicaid Program; Request for Discretionary Disclosure of Information from Prescription Monitoring Program (rev. 7/08).~~

~~Prescription Monitoring Program Internet Datacenter Registration Form (rev. 7/08).~~

Request for a Waiver or an Exemption from Reporting (rev. 5/2018)

Request for a Waiver or an Exemption from Reporting: Veterinarian (rev. 5/2018)

Request to Register as an Authorized Agent to Receive Information from the Prescription Monitoring Program (rev. 7/2017)

Recipient Request for Discretionary Disclosure of Information from the Prescription Monitoring Program (rev. 7/2017)

Regulatory Authority Request for Discretionary Disclosure of Information from the Prescription Monitoring Program (rev. 4/2018)

Application to Register as a Virginia Medicaid Managed Care Authorized Agent to Receive Information from Prescription Monitoring Program (rev. 4/2018)

Account Development Form for Reporting to Virginia's Prescription Monitoring Program (rev. 7/2018)

Request to Register as an Authorized Parole or Probation Officer to Receive Information from the Prescription Monitoring Program (rev. 4/2018)

Request to Register as an Authorized Drug Diversion Investigator to Receive Information from the Prescription Monitoring Program (rev. 4/2018)

VA.R. Doc. No. R19-6038; Filed June 7, 2019, 2:46 p.m.

BOARD OF MEDICINE

Final Regulation

Titles of Regulations: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (adding 18VAC85-20-91).**

18VAC85-50. Regulations Governing the Practice of Physician Assistants (adding 18VAC85-50-191).

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

Effective Date: August 7, 2019.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

Consistent with Chapter 390 of the 2017 Acts of Assembly, the action (i) requires laser hair removal be performed by a "properly trained person" who is a licensee or by a "properly trained person under the direction and supervision" of a doctor, physician assistant, or nurse practitioner and (ii) provides a regulatory framework for such direction and supervision.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC85-20-91. Practice and supervision of laser hair removal.

A. A doctor of medicine or osteopathic medicine may perform or supervise the performance of laser hair removal upon completion of training in the following:

1. Skin physiology and histology;

2. Skin type and appropriate patient selection;

3. Laser safety;

4. Operation of laser device to be used;

5. Recognition of potential complications and response to any actual complication resulting from a laser hair removal treatment; and

6. A minimum number of 10 proctored patient cases with demonstrated competency in treating various skin types.

B. Doctors of medicine or osteopathic medicine who have been performing laser hair removal prior to [~~(the effective date of this regulation)~~ August 7, 2019,] are not required to complete training specified in subsection A of this section.

C. A doctor who delegates the practice of laser hair removal and provides supervision to a person other than a licensed physician assistant or licensed nurse practitioner shall ensure that such person has completed the training required in subsection A of this section.

D. A doctor who performs laser hair removal or who supervises others in the practice shall receive ongoing training as necessary to maintain competency in new techniques and laser devices. The doctor shall ensure that persons the doctor supervises also receive ongoing training to maintain competency.

E. A doctor may delegate laser hair removal to a properly trained person under the doctor's direction and supervision. Direction and supervision shall mean that the doctor is readily available at the time laser hair removal is being performed. The supervising doctor is not required to be physically present but is required to see and evaluate a patient for whom the treatment has resulted in complications prior to the continuance of laser hair removal treatment.

F. Prescribing of medication shall be in accordance with § 54.1-3303 of the Code of Virginia.

18VAC85-50-191. Practice and supervision of laser hair removal.

A. A physician assistant, as authorized pursuant to § 54.1-2952 of the Code of Virginia, may perform or supervise the performance of laser hair removal upon completion of training in the following:

1. Skin physiology and histology;

2. Skin type and appropriate patient selection;

3. Laser safety;

4. Operation of laser device to be used;

5. Recognition of potential complications and response to any actual complication resulting from a laser hair removal treatment; and

6. A minimum number of 10 proctored patient cases with demonstrated competency in treating various skin types.

B. Physician assistants who have been performing laser hair removal prior to [~~(the effective date of this regulation)~~ August 7, 2019,] are not required to complete training specified in subsection A of this section.

C. A physician assistant who delegates the practice of laser hair removal and provides supervision for such practice shall ensure the supervised person has completed the training required in subsection A of this section.

D. A physician assistant who performs laser hair removal or who supervises others in the practice shall receive ongoing training as necessary to maintain competency in new techniques and laser devices. The physician assistant shall ensure that persons the physician assistant supervises also receive ongoing training to maintain competency.

E. A physician assistant may delegate laser hair removal to a properly trained person under the physician assistant's direction and supervision. Direction and supervision shall

mean that the physician assistant is readily available at the time laser hair removal is being performed. The supervising physician assistant is not required to be physically present but is required to see and evaluate a patient for whom the treatment has resulted in complications prior to the continuance of laser hair removal treatment.

F. Prescribing of medication shall be in accordance with § 54.1-3303 of the Code of Virginia.

VA.R. Doc. No. R18-5269; Filed June 14, 2019, 12:39 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-115, 18VAC85-50-130, 18VAC85-50-140).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 7, 2019.

Effective Date: August 22, 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. The statutory provisions for practice of a physician assistant and prescriptive authority are found in § 54.1-2952 of the Code of Virginia.

Purpose: The amendments delete references to an outdated requirement for a practice agreement to be submitted and approved by the board and clarify the practice of physician assistants to further protect the health and safety of persons who receive treatment and care from such practitioners. 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 this chapter. The amendments are clarifying or intended for consistency with statutory provisions. There are no substantive changes, so the amendments are not expected to be controversial.

Substance: Pursuant to its periodic review of 18VAC85-50, Regulations Governing the Practice of Physician Assistants, the board has adopted amendments to delete outdated or unnecessary language. Chapter 450 of the 2016 Acts of Assembly made substantive changes to the statutory requirements for the practice and licensure of physician assistants. An exempt regulatory action was promulgated with an effective date of October 5, 2016. However, during its periodic review of regulations, the advisory board identified several sections inconsistent with the 2016 amendment for the requirement for a practice agreement with prescriptive authority to be submitted and approved by the board.

Issues: There are no real advantages or disadvantages to the public. The amendments are clarifying and consistent with current practice and with the Code of Virginia. 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 remove regulatory language that is inconsistent with 2016 legislative changes and to eliminate a redundant regulatory requirement.

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

Estimated Economic Impact. The Board is proposing to eliminate ancillary language related to a previously-eliminated requirement that physician assistants (PAs) submit practice agreements to the Board for approval. The submittal requirement was eliminated in state statute with the passage of Chapter 450 of the 2016 Acts of Assembly (SB551) and implemented through an exempt regulatory action in 2016, but there still remains some language inadvertently suggesting that submittal to the Board is still required.[2] Further, the legislation removed the requirement that the PAs notify and provide information to the board prior to initiating practice. The legislation also required a PA to enter into a written or electronic practice agreement with at least one supervising physician or podiatrist, to maintain evidence of such agreement, and to provide it to the Board upon request rather than submit to the Board for approval.

During the periodic review, the Physician Assistant Advisory Board identified several sections that are currently inconsistent with statute. In order to address these inconsistencies, the Board proposes to remove language requiring that a separate practice agreement be executed, remove language about Board forms for practice agreements which are no longer provided by the Board and no longer required to be submitted to the Board, etc.

In addition to the changes required to conform the regulation to statute, the Board also discovered a redundant regulatory requirement during the periodic review. The regulation

currently requires applicants for prescriptive authority to submit evidence of successful passage of the National Commission on Certification of Physician Assistants exam while it is simultaneously required for licensure as a PA. This regulatory action would delete the exam requirement for prescriptive authority.

Because none of the proposed changes would have any impact on current practices followed by the Board, they are not expected to create any economic impact beyond improving the accuracy of existing requirements and the consistency between the statute and the regulatory text.

Businesses and Entities Affected. The proposed amendments pertain to the 3,841 licensed physician assistants 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.

---

[1]http://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1649

[2]http://townhall.virginia.gov/l/ViewStage.cfm?stageid=7650

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 (i) remove regulatory language that is inconsistent with § 54.1-2952.1 of the Code of Virginia, which does not require physician assistants to submit practice agreements to the Board of Medicine for approval and (ii) eliminate a redundant regulatory requirement.

18VAC85-50-115. Responsibilities of the physician assistant.

A. The physician assistant shall not render independent health care and shall:

1. Perform only those medical care services that are within the scope of the practice and proficiency of the supervising physician as prescribed in the physician assistant's practice agreement. When a physician assistant is to be supervised by an alternate supervising physician outside the scope of specialty of the supervising physician, then the physician assistant's functions shall be limited to those areas not requiring specialized clinical judgment, unless a separate practice agreement has been executed for that alternate supervising physician ~~is approved and on file with the board~~.

2. Prescribe only those drugs and devices as allowed in Part V (18VAC85-50-130 et seq.) of this chapter.

3. Wear during the course of performing his duties identification showing clearly that he is a physician assistant.

B. An alternate supervising physician shall be a member of the same group ~~or~~, professional corporation, or partnership of any licensee who supervises a physician assistant or shall be a member of the same hospital or commercial enterprise with the supervising physician. Such alternating supervising physician shall be a physician licensed in the Commonwealth who ~~has registered with the board and who~~ has accepted responsibility for the supervision of the service that a physician assistant renders.

C. If, due to illness, vacation, or unexpected absence, the supervising physician or alternate supervising physician is unable to supervise the activities of his physician assistant, such supervising physician may temporarily delegate the responsibility to another doctor of medicine, osteopathic medicine, or podiatry.

Temporary coverage may not exceed four weeks unless special permission is granted by the board.

D. With respect to physician assistants employed by institutions, the following additional regulations shall apply:

1. No physician assistant may render care to a patient unless the physician responsible for that patient has signed the practice agreement to act as supervising physician for that physician assistant. ~~The board shall make available~~

~~appropriate forms for physicians to join the practice agreement for an assistant employed by an institution.~~

2. Any such practice agreement as described in subdivision 1 of this subsection shall delineate the duties which said physician authorizes the physician assistant to perform.

3. The physician assistant shall, as soon as circumstances may dictate, report an acute or significant finding or change in clinical status to the supervising physician concerning the examination of the patient. The physician assistant shall also record his findings in appropriate institutional records.

E. Practice by a physician assistant in a hospital, including an emergency department, shall be in accordance with § 54.1-2952 of the Code of Virginia.

Part V
Prescriptive Authority

18VAC85-50-130. Qualifications for approval of prescriptive authority.

An applicant for prescriptive authority shall meet the following requirements:

1. Hold a current, unrestricted license as a physician assistant in the Commonwealth;

2. ~~Submit~~ Maintain a practice agreement acceptable to the board as prescribed in 18VAC85-50-101~~. This practice agreement must be approved by the board prior to issuance of prescriptive authority~~ and § 54.1-2952.1 of the Code of Virginia; and

3. ~~Submit evidence of successful passing of the NCCPA exam; and 4.~~ Submit evidence of successful completion of a minimum of 35 hours of acceptable training to the board in pharmacology.

18VAC85-50-140. Approved drugs and devices.

A. The approved drugs and devices which the physician assistant with prescriptive authority may prescribe, administer, or dispense manufacturer's professional samples shall be in accordance with provisions of § 54.1-2952.1 of the Code of Virginia:

B. The physician assistant may prescribe only those categories of drugs and devices included in the practice agreement ~~as submitted for authorization~~. The supervising physician retains the authority to restrict certain drugs within these approved categories.

C. The physician assistant, pursuant to § 54.1-2952.1 of the Code of Virginia, shall only dispense manufacturer's professional samples or administer controlled substances in good faith for medical or therapeutic purposes within the course of his professional practice.

VA.R. Doc. No. R19-5717; Filed June 14, 2019, 12:40 p.m.

BOARD OF NURSING

Final Regulation

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (adding 18VAC90-30-124).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Effective Date: August 7, 2019.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

Consistent with Chapter 390 of the 2017 Acts of Assembly, the action (i) requires that laser hair removal must be performed by a "properly trained person" who is a licensee or by a "properly trained person under the direction and supervision" of a doctor, physician assistant, or nurse practitioner and (ii) provides a regulatory framework for such direction and supervision.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

18VAC90-30-124. Direction and supervision of laser hair removal.

A. A nurse practitioner, as authorized pursuant to § 54.1-2957 of the Code of Virginia, may perform or supervise the performance of laser hair removal upon completion of training in the following:

1. Skin physiology and histology;

2. Skin type and appropriate patient selection;

3. Laser safety;

4. Operation of laser device to be used;

5. Recognition of potential complications and response to any actual complication resulting from a laser hair removal treatment; and

6. A minimum number of 10 proctored patient cases with demonstrated competency in treating various skin types.

B. Nurse practitioners who have been performing laser hair removal prior to [~~(the effective date of this regulation)~~ August 7, 2019,] are not required to complete the training specified in subsection A of this section.

C. A nurse practitioner who delegates the practice of laser hair removal and provides supervision for such practice shall ensure the supervised person has completed the training required in subsection A of this section.

D. A nurse practitioner who performs laser hair removal or who supervises others in the practice shall receive ongoing training as necessary to maintain competency in new techniques and laser devices. The nurse practitioner shall ensure that persons the nurse practitioner supervises also receive ongoing training to maintain competency.

E. A nurse practitioner may delegate laser hair removal to a properly trained person under the nurse practitioner's direction and supervision. Direction and supervision shall mean that the nurse practitioner is readily available at the time laser hair removal is being performed. The supervising nurse practitioner is not required to be physically present but is required to see and evaluate a patient for whom the treatment has resulted in complications prior to the continuance of laser hair removal treatment.

F. Prescribing of medication shall be in accordance with § 54.1-3303 of the Code of Virginia.

VA.R. Doc. No. R18-5221; Filed June 14, 2019, 12:41 p.m.

BOARD OF OPTOMETRY

Forms

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

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry.**

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

FORMS (18VAC105-20)

~~Application Instructions for Licensure/TPA Certification (rev. 7/08).~~

~~Form A, Application for a License to Practice Optometry or TPA Certification (rev. 7/08).~~

~~Diagnostic Pharmaceutical Agents Endorsement Application (rev. 7/08).~~

~~Professional Designation Application (rev. 7/08).~~

~~Professional Designation Application Letter (rev. 7/08).~~

~~Application for Reinstatement (rev. 7/08).~~

~~Form B, Licensure Verification (rev. 7/08).~~

~~Application for Registration for Volunteer Practice (9/07).~~

~~Sponsor Certification for Volunteer Registration (9/07).~~

~~Form C, Approved Graduate Optometric Programs (12/06).~~

~~Form D, Certificate of Training (rev. 7/08).~~

Application Instructions for Licensure/TPA Certification (rev. 5/2019)

Application for a License to Practice as a TPA-Certified Optometrist, online form available at https://www.dhp.virginia.gov/Optometry/optometry_forms.htm.

Professional Designation Instructions and Application (rev. 5/2019)

Application for Reinstatement (rev. 5/2019)

Application for Registration for Volunteer Practice (rev. 5/2019)

Sponsor Certification for Volunteer Registration (rev. 5/2019)

Certificate of Training (rev. 5/2019)

Applicant License Verification Form (rev. 5/2019)

Employment Verification Form (rev. 5/2019)

Continuing Education Form (rev. 5/2019)

Continuing Education Credit Form for Volunteer Practice (rev. 5/2019)

Name/Address Change Form (rev. 5/2019)

Professional Designation Change Form (rev. 5/2019)

Written Evidence for Injections (rev. 5/2019)

VA.R. Doc. No. R19-6043; Filed June 11, 2019, 11:19 a.m.

BOARD OF PHARMACY

Fast-Track Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-140).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 7, 2019.

Effective Date: August 22, 2019.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate

regulations to administer the regulatory system. The statutory authority for the board to regulate the security and integrity of drugs and devices is found in § 54.1-3307 of the Code of Virginia.

Purpose: The purpose of the amended regulation is to prevent an entity from using a pharmacy permit without the intent of actually offering pharmacy services. In recent months, inspectors have identified three or four incidents in which a permit has been issued but the pharmacy remains closed indefinitely The concern is that there could be unscrupulous activity (e.g., ordering drugs) using the permit number. To address these concerns and to protect public health and safety, the board proposes to amend the section on issuance of a permit to require a pharmacy to be fully operational within 90 days, unless there are circumstances beyond the control of the permit holder.

Rationale for Using Fast-Track Rulemaking Process: While there are real concerns about public health and safety, there is no evidence that an emergency exists, so an emergency action is not warranted. However, the action should not be controversial and a fast-track rulemaking process is appropriate.

Substance: 18VAC110-20-140 is amended to authorize the board to require a pharmacy to be operational within 90 days of issuance of a permit. If the pharmacy is in violation of the regulation, it would be subject to disciplinary action, including rescission of the permit. The board may grant an extension for circumstances beyond the control of the permit holder.

Issues: The advantage to the public is less risk of a pharmacy permit being used for purposes other than to provide pharmacy services to the public. There are no disadvantages. There are no advantages or disadvantages to this agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to require that once a permit has been issued, the pharmacy shall be fully operational within 90 days of issuance.

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

Estimated Economic Impact. Department of Health Professions (DHP) inspectors have been concerned that a pharmacy permit may be used to order drugs for some purpose other than operating a pharmacy. To hinder that possibility, the proposed new text would authorize the Board to take action against the permit upon evidence that the pharmacy has not actually opened within 90 days of being issued a permit. The proposed language also states that for good cause shown, such as circumstances beyond the control of the permit holder, the Board could grant an extension. The proposed amendment would likely produce a net benefit since it should not significantly affect those who intend to use pharmacy permits for legitimate purposes, and may decrease the likelihood that drugs are illegally diverted.

Businesses and Entities Affected. The proposed amendment potentially affects newly permitted pharmacies. Between December 1, 2017, and November 30, 2018, the Department of Health Professions issued 57 pharmacy permits. Currently 1,850 pharmacies in the Commonwealth hold permits.[1]

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

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

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

Real Estate Development Costs. The proposed amendments do 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 legitimate small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect legitimate businesses.

Localities. The proposed amendments do not adversely affect localities.

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

[1]Data source: Department of Health Professions

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

Summary:

The amendments authorize the board to (i) require a pharmacy to be operational within 90 days of issuance of a permit and (ii) grant an extension for circumstances beyond the control of the permit holder for failing to meet the 90-day requirement.

18VAC110-20-140. New pharmacies, acquisitions, and changes to existing pharmacies.

A. Any person wishing to open a new pharmacy, engage in the acquisition of an existing pharmacy, change the location of an existing pharmacy, move the location or make structural changes to an existing prescription department, or make changes to a previously approved security system shall file an application with the board.

B. In the acquisition of an existing pharmacy, if prescription records are to be accessible to anyone for purposes other than for continuity of pharmacy services at substantially the same level offered by the previous owner or for the necessary transfer of prescription records, the owner of the pharmacy acquiring the records shall disclose such information in writing to each patient 14 days prior to the acquisition. Such release of prescription records shall be allowed only to the extent authorized by § 32.1-127.1:03 of the Code of Virginia.

C. The proposed location or structural changes shall be inspected by an authorized agent of the board prior to issuance of a permit.

1. Pharmacy permit applications ~~which~~ that indicate a requested inspection date~~,~~ or requests ~~which~~ that are received after the application is filed~~,~~ shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

2. Requested inspection dates ~~which~~ that do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

3. At the time of the inspection, the dispensing area shall comply with 18VAC110-20-150, 18VAC110-20-160, 18VAC110-20-170, 18VAC110-20-180, and 18VAC110-20-190.

4. If an applicant substantially fails to meet the requirements for issuance of a permit and a reinspection is required~~,~~ or if the applicant is not ready for the inspection on the established date and fails to notify the inspector or the board at least 24 hours prior to the inspection, the applicant shall pay a reinspection fee as specified in 18VAC110-20-20 prior to a reinspection being conducted.

D. Drugs shall not be stocked within the proposed pharmacy or moved to a new location until approval is granted by the inspector or board staff.

E. Once the permit is issued, prescription drugs may not be stocked earlier than two weeks prior to the designated opening date. Once prescription drugs have been placed in the pharmacy, a pharmacist shall be present on a daily basis to ensure the safety and integrity of the drugs. If there is a change in the designated opening date, the pharmacy shall notify the board office, and a pharmacist shall continue to be on site on a daily basis.

F. Once a permit has been issued, the pharmacy shall be fully operational within 90 days of issuance. For good cause shown, such as circumstances beyond the control of the permit holder, the board may grant an extension.

VA.R. Doc. No. R19-5528; Filed June 14, 2019, 12:42 p.m.

Final Regulation

Title of Regulation: **18VAC110-60. Regulations Governing Pharmaceutical Processors (adding 18VAC110-60-10 through 18VAC110-60-330).**

Statutory Authority: §§ 54.1-3442.6 and 54.1-3447 of the Code of Virginia.

Effective Date: August 7, 2019.

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

Summary:

Pursuant to Chapter 577 of the 2016 Acts of Assembly, Chapter 613 of the 2017 Acts of Assembly, and Chapters 246 and 809 and Chapter 567 of the 2018 Acts of Assembly, the Board of Pharmacy is promulgating a new chapter, 18VAC110-60, governing the registration process for a patient who has been issued a written certification for the use of cannabidiol oil or THC-A oil and the issuance of a permit for a pharmaceutical processor to manufacture and provide cannabidiol oil and THC-A oil to a registered patient. The proposed chapter sets out the requirements for issuance of permits to pharmaceutical processors for the cultivation, production, and dispensing of cannabidiol oil or THC-A oil and establishes requirements for registrations of physicians for writing certification to registered patients, parents, or legal guardians for possession of such oils.

The new chapter establishes (i) definitions and fees to be charged to applicants, registrants, and permitted processors; (ii) as specified in the legislation, requirements for issuance or denial of registration for certifying physicians, patients, parents, or legal guardians; (iii) the application and approval process for issuing a permit to a pharmaceutical processor, including the information that must be submitted, the requirements for issuing conditional and then final approval, the rules for notification to the board of any changes or of closure of the processor, and the causes for action against a processor; (iv) provisions for personnel at the

pharmaceutical processor, including a requirement that a pharmacist with a current, unrestricted Virginia license provide personal supervision on the premises at all times during hours of operation or whenever the processor is accessed and requirements for employee training and supervision of pharmacy technicians and responsibilities of the pharmacist-in-charge; (v) provisions for the operation of a pharmaceutical processor, including requirements for inventory, security, storage and handling, recordkeeping, and reportable events; and (vi) requirements for the cultivation, production, and dispensing of cannabidiol oil or THC-A oil, including labeling, laboratory and testing standards, handling dispensing errors, quality assurance, and proper disposal.

The changes made to the proposed regulation clarify (i) the definition for "90-day supply" and add a definition for "batch," (ii) the requirements for a change of ownership of a pharmaceutical processor, (ii) that laboratory testing must be performed on the final product prior to dispensing, and (iii) laboratory testing and labeling standards.

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.

CHAPTER 60
REGULATIONS GOVERNING PHARMACEUTICAL PROCESSORS

Part I
General Provisions

18VAC110-60-10. Definitions.

In addition to words and terms defined in §§ 54.1-3408.3 and 54.1-3442.5 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:

"90-day supply" means the amount of cannabidiol oil or THC-A oil reasonably necessary to ensure an uninterrupted availability of supply for a 90-day period for registered patients [~~, which cannot exceed 60 fluid ounces~~].

["Batch" means a quantity of cannabidiol oil or THC-A oil from a production lot that is identified by a batch number or other unique identifier.]

"Board" means the Board of Pharmacy.

"Certification" means a written statement, consistent with requirements of § 54.1-3408.3 of the Code of Virginia, issued by a practitioner for the use of cannabidiol oil or THC-A oil for treatment of or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use.

"Dispensing error" means one or more of the following was discovered after the final verification by the pharmacist, regardless of whether the patient received the oil:

1. Variation from the intended oil to be dispensed, including:

a. Incorrect oil;

b. Incorrect oil strength;

c. Incorrect dosage form;

d. Incorrect patient; or

e. Inadequate or incorrect packaging, labeling, or directions.

2. Failure to exercise professional judgment in identifying and managing:

a. Known therapeutic duplication;

b. Known drug-disease contraindications;

c. Known drug-drug interactions;

d. Incorrect drug dosage or duration of drug treatment;

e. Known drug-allergy interactions;

f. A clinically significant, avoidable delay in therapy; or

g. Any other significant, actual, or potential problem with a patient's drug therapy.

3. Delivery of an oil to the incorrect patient.

4. An act or omission relating to the dispensing of cannabidiol oil or THC-A oil that results in, or may reasonably be expected to result in, injury to or death of a registered patient or results in any detrimental change to the medical treatment for the patient.

"Electronic tracking system" means an electronic radio-frequency identification (RFID) seed-to-sale tracking system that tracks the Cannabis from either the seed or immature plant stage until the cannabidiol oil and THC-A oil are sold to a registered patient, parent, or legal guardian or until the Cannabis, including the seeds, parts of plants, and extracts, are destroyed. The electronic tracking system shall include, at a minimum, a central inventory management system and standard and ad hoc reporting functions as required by the board and shall be capable of otherwise satisfying required recordkeeping.

"On duty" means that a pharmacist is on the premises at the address of the permitted pharmaceutical processor and is available as needed.

"PIC" means the pharmacist-in-charge.

"Production" or "produce" means the manufacture, planting, preparation, cultivation, growing, harvesting, propagation, conversion, or processing of marijuana, (i) directly or

indirectly by extraction from substances of natural origin, (ii) independently by means of chemical synthesis, or (iii) by a combination of extraction and chemical synthesis. "Production" or "produce" includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Qualifying patient" means a Virginia resident who has received from a practitioner, as defined in § 54.1-3408.3 of the Code of Virginia, a written certification for the use of cannabidiol oil or THC-A oil for treatment of or to alleviate the symptoms of any diagnosed condition or disease.

"Registered patient" means a qualifying patient who has been issued a registration by the board for the dispensing of cannabidiol oil or THC-A oil to such patient.

"Registration" means an identification card or other document issued by the board that identifies a person as a practitioner or a qualifying patient, parent, or legal guardian.

"Resident" means a person whose principal place of residence is within the Commonwealth as evidenced by a federal or state income tax return or a current Virginia driver's license. If a person is a minor, residency may be established by evidence of Virginia residency by a parent or legal guardian.

"Temperature and humidity" means temperature and humidity maintained in the following ranges:

Room or Phase	Temperature	Humidity
Mother room	65 - 75°	50% - 60%
Nursery phase	71 - 85° F	65% - 75%
Vegetation phase	71 - 85° F	55% - 65%
Flower/harvest phase	71 - 85° F	55% - 60%
Drying/extraction rooms	< 75° F	55% - 60%

18VAC110-60-20. Fees.

A. Fees are required by the board as specified in this section. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Registration of practitioner.

1. Initial registration.	$50
2. Annual renewal of registration.	$50
3. Replacement of registration for a qualifying practitioner whose information has changed or whose original registration certificate has been lost, stolen, or destroyed.	$50

C. Registration by a qualifying patient, parent, or legal guardian.

1. Initial registration of a patient.	$50
2. Annual renewal of registration of a patient.	$50
3. Initial registration of a parent or legal guardian.	$25
4. Annual renewal of registration of a parent or guardian.	$25
5. Replacement of registration for a qualifying patient, parent, or legal guardian whose original registration certificate has been lost, stolen, or destroyed.	$25

D. Pharmaceutical processor permit.

1. Application.	$10,000
2. Initial permit.	$60,000
3. Annual renewal of permit.	$10,000
4. Change of name of processor.	$100
5. Change of PIC or any other information provided on the permit application.	$100
6. [Change of ownership not requiring a criminal background check.	$100
7. Change of ownership requiring a criminal background check.	$250
8.] Any acquisition, expansion, remodel, or change of location requiring an inspection.	$1,000
[~~7.~~ 9.] Reinspection fee.	$1,000
[~~8.~~ 10.] Registration of each cannabidiol oil or THC-A oil product.	$25

Part II
Requirements for Practitioners and Patients

18VAC110-60-30. Requirements for a practitioner issuing a certification.

A. Prior to issuing a certification for cannabidiol oil or THC-A oil for any diagnosed condition or disease, the practitioner shall meet the requirements of § 54.1-3408.3 of the Code of Virginia, shall submit an application and fee as prescribed in 18VAC110-60-20, and shall be registered with the board.

B. A practitioner issuing a certification shall:

1. Conduct an assessment and evaluation of the patient in order to develop a treatment plan for the patient, which

shall include an examination of the patient and the patient's medical history, prescription history, and current medical condition, including an in-person physical examination;

2. Diagnose the patient;

3. Be of the opinion that the potential benefits of cannabidiol oil or THC-A oil would likely outweigh the health risks of such use to the qualifying patient;

4. Explain proper administration and the potential risks and benefits of the cannabidiol oil or THC-A oil to the qualifying patient and, if the qualifying patient lacks legal capacity, to a parent or legal guardian prior to issuing the written certification;

5. Be available or ensure that another practitioner, as defined in § 54.1-3408.3 of the Code of Virginia, is available to provide follow-up care and treatment to the qualifying patient, including physical examinations, to determine the efficacy of cannabidiol oil or THC-A oil for treating the diagnosed condition or disease;

6. Comply with generally accepted standards of medical practice, except to the extent such standards would counsel against certifying a qualifying patient for cannabidiol oil or THC-A oil;

7. Maintain medical records in accordance with 18VAC85-20-26 for all patients for whom the practitioner has issued a certification; and

8. Access or direct the practitioner's delegate to access the Virginia Prescription Monitoring Program of the Department of Health Professions for the purpose of determining which, if any, covered substances have been dispensed to the patient.

C. Patient care and evaluation shall not occur by telemedicine for at least the first year of certification. Thereafter, the practitioner shall use his professional judgment to determine the manner and frequency of patient care and evaluation.

D. A practitioner shall not delegate the responsibility of diagnosing a patient or determining whether a patient should be issued a certification. Employees under the direct supervision of the practitioner may assist with preparing a certification, so long as the final certification is approved and signed by the practitioner before it is issued to the patient.

E. The practitioner shall provide instructions for the use of cannabidiol oil or THC-A oil to the patient, parent, or guardian, as applicable, and shall also securely transmit such instructions to the permitted pharmaceutical processor.

F. A practitioner shall not issue certifications for cannabidiol oil or THC-A oil to more than 600 patients at any given time. However, the practitioner may petition the Board of Pharmacy and Board of Medicine for an increased number of patients for whom certifications may be issued, upon submission of evidence that the limitation represents potential patient harm.

G. Upon request, a practitioner shall make a copy of medical records available to an agent of the Board of Medicine or Board of Pharmacy for the purpose of enabling the board to ensure compliance with the law and regulations or to investigate a possible violation.

18VAC110-60-40. Prohibited practices for practitioners.

A. A practitioner who issues certifications shall not:

1. Directly or indirectly accept, solicit, or receive anything of value from any person associated with a pharmaceutical processor or provider of paraphernalia, excluding information on products or educational materials on the benefits and risks of cannabidiol oil or THC-A oil;

2. Offer a discount or any other thing of value to a qualifying patient, parent, or guardian based on the patient's agreement or decision to use a particular pharmaceutical processor or cannabidiol oil or THC-A oil product;

3. Examine a qualifying patient for purposes of diagnosing the condition or disease at a location where cannabidiol oil or THC-A oil is dispensed or produced; or

4. Directly or indirectly benefit from a patient obtaining a certification. Such prohibition shall not prohibit a practitioner from charging an appropriate fee for the patient visit.

B. A practitioner who issues certifications, and such practitioner's coworker, employee, spouse, parent, or child, shall not have a direct or indirect financial interest in a pharmaceutical processor or any other entity that may benefit from a qualifying patient's acquisition, purchase, or use of cannabidiol oil or THC-A oil, including any formal or informal agreement whereby a pharmaceutical processor or other person provides compensation if the practitioner issues a certification for a qualifying patient or steers a qualifying patient to a specific pharmaceutical processor or cannabidiol oil or THC-A oil product.

C. A practitioner shall not issue a certification for himself or for family members, employees, or coworkers.

D. A practitioner shall not provide product samples containing cannabidiol oil or THC-A oil other than those approved by the U.S. Food and Drug Administration.

18VAC110-60-50. Registration of a patient, parent, or legal guardian.

A. A qualifying patient for whom a practitioner has issued a certification shall register with the board in accordance with this section. If the qualifying patient is a minor or an incapacitated adult, the qualifying patient's parent or legal guardian shall register with the board in accordance with this

section. For a registration application to be considered complete, the following items shall be submitted:

1. A copy of the certification issued by a registered practitioner;

2. Proof of residency of the qualifying patient and proof of residency of a parent or legal guardian, if applicable, such as a government-issued identification card or tax receipt;

3. Proof of identity of the qualifying patient and, if the patient is a minor, proof of identity of the parent or legal guardian in the form of a government-issued identification card;

4. Proof of the qualifying patient's age in the form of a birth certificate or other government-issued identification;

5. Payment of the appropriate fees; and

6. Such other information as the board may require to determine the applicant's suitability for registration or to protect public health and safety.

B. A qualifying patient shall not be issued a written certification by more than one practitioner during a given time period.

C. Patients, parents, and legal guardians issued a registration shall carry their registrations with them whenever they are in possession of cannabidiol oil or THC-A oil.

18VAC110-60-60. Denial of a qualifying patient, parent, or legal guardian registration application.

A. The board may deny an application or renewal of the registration of a qualifying patient, parent, or legal guardian if the applicant:

1. Does not meet the requirements set forth in law or regulation or fails to provide complete information on the application form;

2. Does not provide acceptable proof of identity, residency, or age of the patient to the board;

3. Provides false, misleading, or incorrect information to the board;

4. Has had a qualifying registration of a qualifying patient, parent, or legal guardian denied, suspended, or revoked by the board in the previous six months;

5. Has a certification issued by a practitioner who is not authorized to certify patients for cannabidiol oil or THC-A oil; or

6. Has a prior conviction of a violation of any law pertaining to controlled substances.

B. If the board denies an application or renewal of a qualifying patient, parent, or legal guardian applicant, the board shall provide the applicant with notice of the grounds for the denial and shall inform the applicant of the right to request a hearing pursuant to § 2.2-4019 of the Code of Virginia.

18VAC110-60-70. Reporting requirements for practitioners, patients, parents, or legal guardians.

A. A practitioner shall report to the board, on a form prescribed by the board, the death of a registered patient or a change in status involving a registered patient for whom the practitioner has issued a certification if such change affects the patient's continued eligibility to use cannabidiol oil or THC-A oil or the practitioner's inability to continue treating the patient. A practitioner shall report such death, change of status, or inability to continue treatment not more than 15 days after the practitioner becomes aware of such fact.

B. A patient, parent, or legal guardian who has been issued a registration shall notify the board of any change in the information provided to the board not later than 15 days after such change. The patient, parent, or legal guardian shall report changes that include a change in name, address, contact information, medical status of the patient, or change of the certifying practitioner. The patient, parent, or legal guardian shall report such changes on a form prescribed by the board.

C. If a patient, parent, or legal guardian notifies the board of any change that results in information on the patient, parent, or legal guardian's registration being inaccurate, the board shall issue a replacement registration. Upon receipt of a new registration, the qualifying patient, parent, or legal guardian shall destroy in a nonrecoverable manner the registration that was replaced.

D. If a patient, parent, or legal guardian becomes aware of the loss, theft, or destruction of the registration of such patient, parent, or legal guardian, the patient, parent, or legal guardian shall notify the board not later than five business days after becoming aware of the loss, theft, or destruction, and submit the fee for a replacement registration. The board shall inactivate the initial registration upon receiving such notice and issue a replacement registration upon receiving the applicable fee, provided the applicant continues to satisfy the requirements of law and regulation.

18VAC110-60-80. Proper storage and disposal of cannabidiol oil or THC-A oil by patients, parents, or legal guardians.

A. A registered patient, parent, or legal guardian shall exercise reasonable caution to store cannabidiol oil or THC-A oil in a manner to prevent theft, loss, or access by unauthorized persons.

B. A registered patient, parent, or legal guardian shall dispose of all usable cannabidiol oil or THC-A oil in the registered patient, parent, or legal guardian's possession no later than 10 calendar days after the expiration of the patient's registration if such registration is not renewed, or sooner should the patient no longer wish to possess cannabidiol oil or

THC-A oil. A registered patient, parent, or legal guardian shall complete such disposal by one of the following methods:

1. By removing the oil from the original container and mixing it with an undesirable substance such as used coffee grounds, dirt, or kitty litter. The mixture shall be placed in a sealable bag, empty can, or other container to prevent the drug from leaking or breaking out of a garbage bag.

2. By transferring it to law enforcement via a medication drop-box or drug take-back event if permissible under state and federal law.

18VAC110-60-90. Revocation or suspension of a qualifying patient, parent, or legal guardian registration.

The board may revoke or suspend the registration of a patient, parent, or legal guardian under the following circumstances:

1. The patient's practitioner notifies the board that the practitioner is withdrawing the written certification submitted on behalf of the patient, and 30 days after the practitioner's withdrawal of the written certification the patient has not obtained a valid written certification from a different practitioner;

2. The patient, parent, or legal guardian provided false, misleading, or incorrect information to the board;

3. The patient, parent, or legal guardian is no longer a resident of Virginia;

4. The patient, parent, or legal guardian obtained more than a 90-day supply of cannabidiol oil or THC-A oil in a 90-day period;

5. The patient, parent, or legal guardian provided or sold cannabidiol oil or THC-A oil to any person, including another registered patient, parent, or legal guardian;

6. The patient, parent, or legal guardian permitted another person to use the registration of the patient, parent, or legal guardian;

7. The patient, parent, or legal guardian tampered, falsified, altered, modified, or allowed another person to tamper, falsify, alter, or modify the registration of the patient, parent, or legal guardian;

8. The registration of the patient, parent, or legal guardian was lost, stolen, or destroyed, and the patient, parent, or legal guardian failed to notify the board or notified the board of such incident more than five business days after becoming aware that the registration was lost, stolen, or destroyed;

9. The patient, parent, or legal guardian failed to notify the board of a change in registration information or notified the board of such change more than 14 days after the change; or

10. The patient, parent, or legal guardian violated any federal or state law or regulation.

Part III
Application and Approval Process for Pharmaceutical Processors

18VAC110-60-100. Publication of notice for submission of applications.

A. The board shall publish a notice of open applications for pharmaceutical processor permits. Such notice shall include information on how to obtain and complete an application, the required fees, the criteria for issuance of a permit, and the deadline for receipt of applications.

B. The board shall have the right to amend the notice of open applications prior to the deadline for submitting an application. Such amended notice shall be published in the same manner as the original notice of open applications.

C. The board shall have the right to cancel a notice of open applications prior to the award of a pharmaceutical processor permit.

18VAC110-60-110. Application process for pharmaceutical processor permits.

A. The application process for permits shall occur in three stages: submission of initial application, award of conditional approval, and grant of a pharmaceutical processor permit.

B. Submission of initial application.

1. A pharmaceutical processor permit applicant shall submit the required application fee and form with the following information and documentation:

a. The name and address of the applicant and the applicant's owners;

b. The location within the health service area established by the State Board of Health for the pharmaceutical processor that is to be operated under such permit;

c. Detailed information regarding the applicant's financial position indicating all assets, liabilities, income, and net worth to demonstrate the financial capacity of the applicant to build and operate a facility to cultivate Cannabis plants intended only for the production and dispensing of cannabidiol oil and THC-A oil pursuant to §§ 54.1-3442.6 and 54.1-3442.7 of the Code of Virginia, which may include evidence of an escrow account, letter of credit, or performance surety bond;

d. Details regarding the applicant's plans for security to maintain adequate control against the diversion, theft, or loss of the Cannabis plants and the cannabidiol oil or THC-A oil;

e. Documents sufficient to establish that the applicant is authorized to conduct business in Virginia and that all applicable state and local building, fire, and zoning requirements and local ordinances are met or will be met prior to issuance of a permit;

f. Information necessary for the board to conduct a criminal background check on the applicant;

g. Information about any previous or current involvement in the medical cannabidiol oil or THC-A oil industry;

h. Whether the applicant has ever applied for a permit or registration related to medical cannabidiol oil or THC-A oil in any state and, if so, the status of that application, permit, or registration, to include any disciplinary action taken by any state on the permit, the registration, or an associated license;

i. Any business and marketing plans related to the operation of the pharmaceutical processor or the sale of cannabidiol oil or THC-A oil;

j. Text and graphic materials showing the exterior appearance of the proposed pharmaceutical processor;

k. A blueprint of the proposed pharmaceutical processor that shall show and identify (i) the square footage of each area of the facility; (ii) the location of all safes or vaults used to store the Cannabis plants and oils; (iii) the location of all areas that may contain Cannabis plants, cannabidiol oil, or THC-A oil; (iv) the placement of walls, partitions, and counters; and (v) all areas of ingress and egress;

l. Documents related to any compassionate need program the pharmaceutical processor intends to offer;

m. Information about the applicant's expertise in agriculture and other production techniques required to produce cannabidiol oil or THC-A oil and to safely dispense such products; and

n. Such other documents and information required by the board to determine the applicant's suitability for permitting or to protect public health and safety.

2. In the event any information contained in the application or accompanying documents changes after being submitted to the board, the applicant shall immediately notify the board in writing and provide corrected information in a timely manner so as not to disrupt the permit selection process.

3. The board shall conduct criminal background checks on applicants and may verify information contained in each application and accompanying documentation in order to assess the applicant's ability to operate a pharmaceutical processor.

C. In the event the board determines that there are no qualified applicants to award conditional approval for a pharmaceutical processor permit in a health service area, the board may republish, in accordance with 18VAC110-60-100, a notice of open applications for pharmaceutical processor permits.

D. No person who has been convicted of a felony or of any offense in violation of Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia shall have any form of ownership, be employed by, or act as an agent of a pharmaceutical processor.

18VAC110-60-120. Conditional approval.

A. Following the deadline for receipt of applications, the board shall evaluate each complete and timely submitted application and may grant conditional approval on a competitive basis based on compliance with requirements set forth in 18VAC110-60-110.

B. The board shall consider, but is not limited to, the following criteria in evaluating pharmaceutical processor permit applications:

1. The results of the criminal background checks required in 18VAC110-60-110 B 3 or any history of disciplinary action imposed by a state or federal regulatory agency;

2. The location for the proposed pharmaceutical processor, which shall not be within 1,000 feet of a school or daycare;

3. The applicant's ability to maintain adequate control against the diversion, theft, and loss of the Cannabis, to include the seeds, any parts or extracts of the Cannabis plants, the cannabidiol oil, or the THC-A oil;

4. The applicant's ability to maintain the knowledge, understanding, judgment, procedures, security controls, and ethics to ensure optimal safety and accuracy in the dispensing and sale of cannabidiol oil or THC-A oil;

5. The extent to which the applicant or any of the applicant's pharmaceutical processor owners have a financial interest in another license, permit, registrant, or applicant; and

6. Any other reason provided by state or federal statute or [~~state or federal~~] regulation that is not inconsistent with the law and regulations regarding pharmaceutical processors.

C. The board may disqualify any applicant who:

1. Submits an incomplete, false, inaccurate, or misleading application;

2. Fails to submit an application by the published deadline;

3. Fails to pay all applicable fees; or

4. Fails to comply with all requirements for a pharmaceutical processor.

D. Following review, the board shall notify applicants of denial or conditional approval. The decision of the board not to grant conditional approval to an applicant shall be final.

E. If granted conditional approval, an applicant shall have one year from date of notification to complete all requirements for issuance of a permit, to include employment of a PIC and other personnel necessary for operation of a pharmaceutical processor, construction or remodeling of a facility, installation of equipment, and securing local zoning approval.

18VAC110-60-130. Granting of a pharmaceutical processor permit.

A. The board may issue a pharmaceutical processor permit when all requirements of the board have been met, to include:

1. Designation of a PIC;

2. Evidence of criminal background checks for all employees and delivery agents of the processor to ensure compliance with § 54.1-3442.6 of the Code of Virginia;

3. Evidence of utilization of an electronic tracking system; and

4. A satisfactory inspection of the facility conducted by the board or its agents.

B. The permit shall not be awarded until any deficiency identified by inspectors has been corrected and the facility has been satisfactorily reinspected if warranted.

C. Before any permit is issued, the applicant shall attest to compliance with all state and local laws and ordinances. A pharmaceutical processor permit shall not be issued to any person to operate from a private dwelling or residence.

D. If an applicant has been awarded a pharmaceutical processor permit and has not commenced operation of such facility within 180 days of being notified of the issuance of a pharmaceutical processor permit, the board may rescind such permit, unless such delay was caused by circumstances beyond the control of the permit holder.

E. A pharmaceutical processor shall be deemed to have commenced operation if Cannabis plants are under cultivation by the processor in accordance with the approved application.

F. In the event a permit is rescinded pursuant to this section, the board may award a pharmaceutical processor permit by selecting among the qualified applicants who applied for the pharmaceutical processor permit subject to rescission. If no other qualified applicant who applied for such pharmaceutical processor permit satisfied the criteria for awarding a permit, the board shall publish in accordance with this section a notice of open applications for a pharmaceutical processor permit.

G. Once the permit is issued, Cannabis may not be grown or held in the pharmaceutical processor earlier than two weeks prior to the opening date designated on the application. Once Cannabis has been placed in the pharmaceutical processor, a pharmacist shall be present during hours of operation to ensure the safety, security, and integrity of the Cannabis. If there is a change in the designated opening date, the pharmaceutical processor shall notify the board office, and a pharmacist shall continue to be on site on a daily basis.

18VAC110-60-140. Notification of changes by pharmaceutical processor.

A. Unless otherwise provided in law or regulation, the PIC designated on the application to be in full and actual charge of the pharmaceutical processor shall provide any notification or information that is required from a pharmaceutical processor.

B. Prior to making any change to the pharmaceutical processor name, the pharmaceutical processor shall submit an application for such change to the board and pay the fee.

C. Any person wishing to engage in the acquisition of an existing pharmaceutical processor, change the location of an existing pharmaceutical processor, make structural changes to an existing pharmaceutical processor, or make changes to a previously approved security system shall submit an application to the board and pay the required fee.

1. The proposed location or structural changes shall be inspected by an authorized agent of the board prior to issuance of a permit.

2. Cannabis shall not be moved to a new location until approval is granted by the inspector or board staff.

18VAC110-60-150. Pharmaceutical processor closings; going out of business; change of ownership.

A. At least 30 days prior to the date a pharmaceutical processor closes, either temporarily or permanently, the owner shall:

1. Notify the board;

2. Send written notification to patients with current certification; and

3. Post a notice on the window or door of the pharmaceutical processor.

B. The proposed disposition of all Cannabis, dispensing records, patient information records, and other required records shall be reported to the board. If the Cannabis and records are to be transferred to another processor located in Virginia, the owner shall inform the board and the patients and include on the public notice the name and address of the processor to whom the Cannabis and records are being transferred and the date of transfer.

C. Exceptions to the public notice shall be approved by the board and may include sudden closing due to fire,

destruction, natural disaster, death, property seizure, eviction, bankruptcy, or other emergency circumstances. If the pharmaceutical processor is not able to meet the notification requirements, the owner shall ensure that the board and public are properly notified as soon as [~~he~~ the owner] knows of the closure and shall disclose the emergency circumstances preventing the notification within the required deadlines.

D. In the event of an exception to the notice, the PIC or owner shall provide notice as far in advance of closing as allowed by the circumstances.

E. At least 14 days prior to any change in ownership of an existing pharmaceutical processor, the owner shall notify the board of the pending change.

1. Upon any change in ownership of an existing pharmaceutical processor, the dispensing records for the two years immediately preceding the date of change of ownership and other required patient information shall be provided to the new owners on the date of change of ownership in substantially the same format as previously used immediately prior to the transfer to provide continuity of services.

2. The previous owner shall be held responsible for assuring the proper and lawful transfer of records on the date of the transfer.

[3. If a new owner's share constitutes 5.0% or greater of the total ownership, the new owner shall submit to fingerprinting and the criminal history record search required by of § 54.1-3442.6 E of the Code of Virginia.]

18VAC110-60-160. Grounds for action against a pharmaceutical processor permit.

In addition to the bases enumerated in § 54.1-3316 of the Code of Virginia, the board may suspend, revoke, or refuse to grant or renew a permit issued; place such permit on probation; place conditions on such permit; or take other actions permitted by statute or regulation on the following grounds:

1. Any criminal conviction under federal or state statutes or regulations or local ordinances, unless the conviction was based on a federal statute or regulation related to the possession, purchase, or sale of cannabidiol oil or THC-A oil that is authorized under state law and regulations;

2. Any civil action under any federal or state statute or regulation or local ordinance (i) relating to the applicant's, licensee's, permit holder's, or registrant's profession or (ii) involving drugs, medical devices, or fraudulent practices, including fraudulent billing practices;

3. Failure to maintain effective controls against diversion, theft, or loss of Cannabis, cannabidiol oil or THC-A oil, or other controlled substances;

4. Intentionally or through negligence obscuring, damaging, or defacing a permit or registration card;

5. Permitting another person to use the permit of a permit holder or registration of a qualifying patient, parent, or legal guardian;

6. Failure to cooperate or give information to the board on any matter arising out of conduct at a pharmaceutical processor; or

7. Discontinuance of business for more than 60 days, unless the board approves an extension of such period for good cause shown upon a written request from a pharmaceutical processor. Good cause includes exigent circumstances that necessitate the closing of the facility. Good cause shall not include a voluntary closing of the pharmaceutical processor or production facility.

Part IV
Requirements for Pharmaceutical Processor Personnel

18VAC110-60-170. Pharmaceutical processor employee licenses and registrations.

A. A pharmacist with a current, unrestricted license issued by the board practicing at the location of the address on the pharmaceutical processor application shall be in full and actual charge of a pharmaceutical processor and serve as the pharmacist-in-charge.

B. A pharmacist with a current, unrestricted license issued by the board shall provide personal supervision on the premises of the pharmaceutical processor at all times during hours of operation or whenever the processor is being accessed.

C. A person who holds a current, unrestricted registration as a pharmacy technician pursuant to § 54.1-3321 of the Code of Virginia and who has had at least two years of experience practicing as a pharmacy technician may perform the following duties under supervision of a pharmacist:

1. The entry of drug dispensing information and drug history into a data system or other recordkeeping system;

2. The preparation of labels for dispensing the oils or patient information;

3. The removal of the oil to be dispensed from inventory;

4. The measuring of the oil to be dispensed;

5. The packaging and labeling of the oil to be dispensed and the repackaging thereof;

6. The stocking or loading of devices used in the dispensing process;

7. The selling of the oil to the registered patient, parent, or legal guardian; and

8. The performance of any other task restricted to pharmacy technicians by the board's regulations.

D. A pharmacist with a current, unrestricted license; a registered pharmacy intern who has completed the first professional year of pharmacy school; or a pharmacy technician with a current, unrestricted registration issued by the board may perform duties associated with the cultivation, extraction, and dispensing of the oils as authorized by the PIC or as otherwise authorized in law.

E. A person who does not maintain licensure as a pharmacist or registration as a pharmacy technician but has received a degree in horticulture or has at least two years of experience cultivating plants may perform duties associated with the cultivation of Cannabis as authorized by the PIC.

F. A person who does not maintain licensure as a pharmacist or registration as a pharmacy technician, but has received a degree in chemistry or pharmacology or has at least two years of experience extracting chemicals from plants may perform duties associated with the extraction of cannabidiol oil and THC-A oil as authorized by the PIC.

G. A pharmacist on duty shall directly supervise the activities in all areas designated for cultivation, extraction, and dispensing or have a process in place, approved by the board, that provides adequate supervision to protect the security of the Cannabis, seeds, extracts, cannabidiol oil, and THC-A oil and ensure quality of the dispensed oils.

H. At no time shall a pharmaceutical processor operate or be accessed without a pharmacist on duty.

I. No person shall be employed by or serve as an agent of a pharmaceutical processor without being at least 18 years of age.

J. No person who has had a license or registration suspended or revoked or been denied issuance of such license or registration shall serve as an employee or agent of the pharmaceutical processor unless such license or registration has been reinstated and is current and unrestricted.

18VAC110-60-180. Employee training.

A. All employees of a pharmaceutical processor shall complete training prior to the employee commencing work at the pharmaceutical processor. At a minimum, the training shall be in the following areas:

1. The proper use of security measures and controls that have been adopted for the prevention of diversion, theft, or loss of Cannabis, to include the seeds, any parts or extracts of the Cannabis plants, cannabidiol oil, and THC-A oil;

2. Procedures and instructions for responding to an emergency;

3. Professional conduct, ethics, and state and federal statutes and regulations regarding patient confidentiality; and

4. Developments in the field of the medical use of cannabidiol oil or THC-A oil.

B. Prior to regular performance of assigned tasks, the employee shall also receive on-the-job training and other related education, which shall be commensurate with the tasks assigned to the employee.

C. The PIC shall assure the continued competency of all employees through continuing in-service training that is provided at least annually, is designed to supplement initial training, and includes any guidance specified by the board.

D. The PIC shall be responsible for maintaining a written record documenting the initial and continuing training of all employees that shall contain:

1. The name of the person receiving the training;

2. The dates of the training;

3. A general description of the topics covered;

4. The name of the person supervising the training; and

5. The signatures of the person receiving the training and the PIC.

E. When a change of pharmaceutical processor PIC occurs, the new PIC shall review the training record and sign it, indicating that the new PIC understands its contents.

F. A pharmaceutical processor shall maintain the record documenting the employee training and make it available in accordance with regulations.

18VAC110-60-190. Pharmacy technicians; ratio; supervision and responsibility.

A. The ratio of pharmacy technicians to pharmacists on duty in the areas of a pharmaceutical processor designated for production or dispensing shall not exceed four pharmacy technicians to one pharmacist.

B. The pharmacist providing direct supervision of pharmacy technicians may be held responsible for the pharmacy technicians' actions. Any violations relating to the dispensing of cannabidiol oil or THC-A oil resulting from the actions of a pharmacy technician shall constitute grounds for action against the license of the pharmacist and the registration of the pharmacy technician. As used in this subsection, "direct supervision" means a supervising pharmacist who:

1. Is on duty where the pharmacy technician is performing routine cannabidiol oil or THC-A oil production or dispensing functions; and

2. Conducts in-process and final checks on the pharmacy technician's performance.

C. Pharmacy technicians shall not:

1. Counsel a registered patient or the patient's parent or legal guardian regarding (i) cannabidiol oil, THC-A oil, or other drugs either before or after cannabidiol oil or THC-A oil has been dispensed or (ii) any medical information contained in a patient medication record;

2. Consult with the practitioner who certified the qualifying patient, or the practitioner's agent, regarding a patient or any medical information pertaining to the patient's cannabidiol oil or THC-A oil or any other drug the patient may be taking;

3. Interpret the patient's clinical data or provide medical advice;

4. Determine whether a different formulation of cannabidiol oil or THC-A oil should be substituted for the cannabidiol oil or THC-A oil product or formulation recommended by the practitioner or requested by the registered patient or parent or legal guardian; or

5. Communicate with a practitioner who certified a registered patient, or the practitioner's agent, to obtain a clarification on a qualifying patient's written certification or instructions.

18VAC110-60-200. Responsibilities of the PIC.

A. No person shall be PIC for more than one pharmaceutical processor or for one processor and a pharmacy at any one time. A processor shall employ the PIC at the pharmaceutical processor for at least 35 hours per week, except as otherwise authorized by the board.

B. The PIC or the pharmacist on duty shall control all aspects of the practice of the pharmaceutical processor. Any decision overriding such control of the PIC or other pharmacist on duty may be grounds for disciplinary action against the pharmaceutical processor permit.

C. The pharmaceutical processor PIC shall be responsible for ensuring that:

1. Pharmacy technicians are registered and all employees are properly trained;

2. All record retention requirements are met;

3. All requirements for the physical security of the Cannabis, to include the seeds, any parts or extracts of the Cannabis plants, the cannabidiol oil, and the THC-A oil are met;

4. The pharmaceutical processor has appropriate pharmaceutical reference materials to ensure that cannabidiol oil or THC-A oil can be properly dispensed;

5. The following items are conspicuously posted in the pharmaceutical processor in a location and in a manner so as to be clearly and readily identifiable to registered patients, parents, or legal guardians:

a. Pharmaceutical processor permit;

b. Licenses for all pharmacists practicing at the pharmaceutical processor; and

c. The price of all cannabidiol oil or THC-A oil products offered by the pharmaceutical processor; and

6. Any other required filings or notifications are made on behalf of the processor as set forth in regulation.

D. When the PIC ceases practice at a pharmaceutical processor or no longer wishes to be designated as PIC, he shall immediately return the pharmaceutical processor permit to the board indicating the effective date on which he ceased to be the PIC.

E. An outgoing PIC shall have the opportunity to take a complete and accurate inventory of all Cannabis, to include plants, extracts, cannabidiol oil, or THC-A oil on hand on the date he ceases to be the PIC, unless the owner submits written notice to the board showing good cause as to why this opportunity should not be allowed.

F. A PIC who is absent from practice for more than 30 consecutive days shall be deemed to no longer be the PIC. If the PIC knows of an upcoming absence of longer than 30 days, he shall be responsible for notifying the board and returning the permit. For unanticipated absences by the PIC that exceed 15 days with no known return date within the next 15 days, the permit holder shall immediately notify the board and shall obtain a new PIC.

G. An application for a permit designating the new PIC shall be filed with the required fee within 14 days of the original date of resignation or termination of the PIC on a form provided by the board. It shall be unlawful for a pharmaceutical processor to operate without a new permit past the 14-day deadline unless the board receives a request for an extension prior to the deadline. The executive director for the board may grant an extension for up to an additional 14 days for good cause shown.

Part V
Operation of a Pharmaceutical Processor

18VAC110-60-210. General provisions.

A. A pharmaceutical processor shall sell cannabidiol oil or THC-A oil only in a child-resistant, secure, and light-resistant container. Upon a written request from the registered patient, parent, or legal guardian, the oil may be dispensed in a non-child-resistant container so long as all labeling is maintained with the product.

B. Only a pharmacist may dispense cannabidiol oil or THC-A oil to registered patients or parents or legal guardians of patients who are minors or incapacitated adults and who are

registered with the board. A pharmacy technician who meets the requirements of 18VAC110-60-170 C may assist, under the direct supervision of a pharmacist, in the dispensing and selling of cannabidiol oil or THC-A oil.

C. The PIC or pharmacist on duty shall restrict access to the pharmaceutical processor to:

1. A person whose responsibilities necessitate access to the pharmaceutical processor and then for only as long as necessary to perform the person's job duties; or

2. A person who is a registered patient, parent, or legal guardian, in which case such person shall not be permitted behind the service counter or in other areas where Cannabis plants, extracts, cannabidiol oil, or THC-A oil is stored.

D. All pharmacists and pharmacy technicians shall at all times while at the pharmaceutical processor have their current license or registration available for inspection by the board or the board's agent.

E. While inside the pharmaceutical processor, all pharmaceutical processor employees shall wear name tags or similar forms of identification that clearly identify them, including their position at the pharmaceutical processor.

F. A pharmaceutical processor shall be open for registered patients, parents, or legal guardians to purchase cannabidiol oil or THC-A oil products for a minimum of 35 hours a week, except as otherwise authorized by the board.

G. A pharmaceutical processor that closes during its normal hours of operation shall implement procedures to notify registered patients, parents, and legal guardians of when the pharmaceutical processor will resume normal hours of operation. Such procedures may include telephone system messages and conspicuously posted signs. If the pharmaceutical processor is or will be closed during its normal hours of operation for longer than two business days, the pharmaceutical processor shall immediately notify the board.

H. A pharmacist shall counsel registered patients, parents, and legal guardians regarding the use of cannabidiol oil or THC-A oil. Such counseling shall include information related to safe techniques for proper use and storage of cannabidiol oil or THC-A oil and for disposal of the oils in a manner that renders them nonrecoverable.

I. The pharmaceutical processor shall establish, implement, and adhere to a written alcohol-free, drug-free, and smoke-free work place policy that shall be available to the board or the board's agent upon request.

18VAC110-60-220. Pharmaceutical processor prohibitions.

A. No pharmaceutical processor shall:

1. Cultivate Cannabis plants or produce or dispense cannabidiol oil or THC-A oil in any place except the approved facility at the address of record on the application for the pharmaceutical processor permit;

2. Sell, deliver, transport, or distribute Cannabis, including cannabidiol oil or THC-A oil, to any other facility;

3. Produce or manufacture cannabidiol oil or THC-A oil for use outside of Virginia; or

4. Provide cannabidiol oil or THC-A oil samples.

B. No pharmaceutical processor shall be open or in operation, and no person shall be in the pharmaceutical processor, unless a pharmacist is on the premises and directly supervising the activity within the pharmaceutical processor. At all other times, the pharmaceutical processor shall be closed and properly secured.

C. No pharmaceutical processor shall sell anything other than cannabidiol oil or THC-A oil products from the pharmaceutical processor.

D. A pharmaceutical processor shall not advertise cannabidiol oil or THC-A oil products, except it may post the following information on websites:

1. Name and location of the processor;

2. Contact information for the processor;

3. Hours and days the pharmaceutical processor is open for dispensing cannabidiol oil or THC-A oil products;

4. Laboratory results;

5. Product information and pricing; and

6. Directions to the processor facility.

E. No cannabidiol oil or THC-A oil shall be consumed on the premises of a pharmaceutical processor, except for emergency administration to a registered patient.

F. No person except a pharmaceutical processor employee or a registered patient, parent, or legal guardian shall be allowed on the premises of a processor with the following exceptions: laboratory staff may enter a processor for the sole purpose of identifying and collecting Cannabis, cannabidiol oil, or THC-A oil samples for purposes of conducting laboratory tests; the board or the board's authorized representative may waive the prohibition upon prior written request.

G. All persons who have been authorized in writing to enter the facility by the board or the board's authorized representative shall obtain a visitor identification badge from a pharmaceutical processor employee prior to entering the pharmaceutical processor.

1. An employee shall escort and monitor an authorized visitor at all times the visitor is in the pharmaceutical processor.

2. A visitor shall visibly display the visitor identification badge at all times the visitor is in the pharmaceutical processor and shall return the visitor identification badge to a pharmaceutical processor employee upon exiting the pharmaceutical processor.

3. All visitors shall log in and out. The pharmaceutical processor shall maintain the visitor log that shall include the date, time, and purpose of the visit and that shall be available to the board.

4. If an emergency requires the presence of a visitor and makes it impractical for the pharmaceutical processor to obtain a waiver from the board, the processor shall provide written notice to the board as soon as practicable after the onset of the emergency. Such notice shall include the name and company affiliation of the visitor, the purpose of the visit, and the date and time of the visit. A pharmaceutical processor shall monitor the visitor and maintain a log of such visit as required by this subsection.

H. No cannabidiol oil or THC-A oil shall be sold, dispensed, or distributed via a delivery service or any other manner outside of a pharmaceutical processor, except that a registered parent or legal guardian [or an agent of the processor] may deliver cannabidiol oil or THC-A oil to the registered patient or in accordance with 18VAC110-60-310 A.

I. Notwithstanding the requirements of subsection F of this section, an agent of the board or local law enforcement or other federal, state, or local government officials may enter any area of a pharmaceutical processor if necessary to perform their governmental duties.

18VAC110-60-230. Inventory requirements.

A. Each pharmaceutical processor prior to commencing business shall:

1. Conduct an initial comprehensive inventory of all Cannabis plants, including the seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil, at the facility. The inventory shall include, at a minimum, the date of the inventory, a summary of the inventory findings, and the name, signature, and title of the pharmacist or pharmacy technician who conducted the inventory. If a facility commences business with no Cannabis on hand, the pharmacist shall record this fact as the initial inventory; and

2. Establish ongoing inventory controls and procedures for the conduct of inventory reviews and comprehensive inventories of all Cannabis plants, including the seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil, that shall enable the facility to detect any diversion, theft, or loss in a timely manner.

B. Upon commencing business, each pharmaceutical processor and production facility shall conduct a weekly inventory of all Cannabis plants, including the seeds, parts of plants, cannabidiol oil, and THC-A oil in stock, that shall include, at a minimum, the date of the inventory, a summary of the inventory findings, and the name, signature, and title of the pharmacist or pharmacy technician who conducted the inventory. The record of all cannabidiol oil and THC-A oil sold, dispensed, or otherwise disposed of shall show the date of sale; the name of the pharmaceutical processor; the registered patient, parent, or legal guardian to whom the cannabidiol oil or THC-A oil was sold; the address of such person; and the kind and quantity of cannabidiol oil or THC-A oil sold.

C. The record of all cannabidiol oil and THC-A oil sold, dispensed, or otherwise disposed of shall show the date of sale or disposition; the name of the pharmaceutical processor; the name and address of the registered patient, parent, or legal guardian to whom the cannabidiol oil or THC-A oil was sold; the kind and quantity of cannabidiol oil or THC-A oil sold or disposed of; and the method of disposal.

D. A complete and accurate record of all Cannabis plants, including the seeds, parts of plants, cannabidiol oil, and THC-A oil on hand shall be prepared annually on the anniversary of the initial inventory or such other date that the PIC may choose, so long as it is not more than one year following the prior year's inventory.

E. All inventories, procedures, and other documents required by this section shall be maintained on the premises and made available to the board or its agent.

F. Inventory records shall be maintained for three years from the date the inventory was taken.

G. Whenever any sample or record is removed by a person authorized to enforce state or federal law for the purpose of investigation or as evidence, such person shall tender a receipt in lieu thereof and the receipt shall be kept for a period of at least three years.

18VAC110-60-240. Security requirements.

A. A pharmaceutical processor shall initially cultivate only the number of Cannabis plants necessary to produce cannabidiol oil or THC-A oil for the number of patients anticipated within the first nine months of operation. Thereafter, the processor shall:

1. Not maintain more than 12 Cannabis plants per patient at any given time based on dispensing data from the previous 90 days;

2. Not maintain cannabidiol oil or THC-A oil in excess of the quantity required for normal, efficient operation;

3. Maintain all Cannabis plants, seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil in a secure area or location accessible only by the minimum number of authorized employees essential for efficient operation;

4. Store all cut parts of Cannabis plants, extracts, cannabidiol oil, or THC-A oil in an approved safe or approved vault within the pharmaceutical processor and not sell cannabidiol oil or THC-A oil products when the pharmaceutical processor is closed;

5. Keep all approved safes, approved vaults, or any other approved equipment or areas used for the production, cultivation, harvesting, processing, manufacturing, or storage of cannabidiol oil or THC-A oil securely locked or protected from entry, except for the actual time required to remove or replace the Cannabis, seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil;

6. Keep all locks and security equipment in good working order;

7. Restrict access to keys or codes to all safes, approved vaults, or other approved equipment or areas to pharmacists practicing at the pharmaceutical processor; and

8. Not allow keys to be left in the locks or accessible to non-pharmacists.

B. The pharmaceutical processor shall have an adequate security system to prevent and detect diversion, theft, or loss of Cannabis seeds, plants, extracts, cannabidiol oil, or THC-A oil. A device for the detection of breaking and a back-up alarm system with an ability to remain operational during a power outage shall be installed in each pharmaceutical processor. The installation and the device shall be based on accepted alarm industry standards and subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or other generally accepted and suitable device;

2. The device shall be monitored in accordance with accepted industry standards, be maintained in operating order, have an auxiliary source of power, and be capable of sending an alarm signal to the monitoring entity when breached if the communication line is not operational;

3. The device shall fully protect the entire processor facility and shall be capable of detecting breaking by any means when activated;

4. The device shall include a duress alarm, a panic alarm, and an automatic voice dialer; and

5. Access to the alarm system for the pharmaceutical processor shall be restricted to the pharmacists working at the pharmaceutical processor, and the system shall be activated whenever the pharmaceutical processor is closed for business.

C. A pharmaceutical processor shall keep the outside perimeter of the premises well-lit. A processor shall have video cameras in all areas that may contain Cannabis plants, seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil and at all points of entry and exit, which shall be appropriate for the normal lighting conditions of the area under surveillance.

1. The processor shall direct cameras at all approved safes, approved vaults, dispensing areas, cannabidiol oil or THC-A oil sales areas, and any other area where Cannabis plants, seeds, extracts, cannabidiol oil, or THC-A oil are being produced, harvested, manufactured, stored, or handled. At entry and exit points, the processor shall angle cameras so as to allow for the capture of clear and certain identification of any person entering or exiting the facility;

2. The video system shall have:

a. A failure notification system that provides an audible, text, or visual notification of any failure in the surveillance system. The failure notification system shall provide an alert to the processor within five minutes of the failure, either by telephone, email, or text message;

b. The ability to immediately produce a clear color still photo that is a minimum of 9600 dpi from any camera image, live or recorded;

c. A date and time stamp embedded on all recordings. The date and time shall be synchronized and set correctly and shall not significantly obscure the picture; and

d. The ability to remain operational during a power outage;

3. All video recordings shall allow for the exporting of still images in an industry standard image format. Exported video shall have the ability to be archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place. Exported video shall also have the ability to be saved in an industry standard file format that can be played on a standard computer operating system. A pharmaceutical processor shall erase all recordings prior to disposal or sale of the facility; and

4. The processor shall make 24-hour recordings from all video cameras available for immediate viewing by the board or the board's agent upon request and shall retain the recordings for at least 30 days. If a processor is aware of a

pending criminal, civil, or administrative investigation or legal proceeding for which a recording may contain relevant information, the processor shall retain an unaltered copy of the recording until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the pharmaceutical processor PIC that it is not necessary to retain the recording.

D. The processor shall maintain all security system equipment and recordings in a secure location so as to prevent theft, loss, destruction, or alterations. All security equipment shall be maintained in good working order and shall be tested at least every six months.

E. A pharmaceutical processor shall limit access to surveillance areas to persons who are essential to surveillance operations, law-enforcement agencies, security system service employees, the board or the board's agent, and others when approved by the board. A processor shall make available a current list of authorized employees and security system service employees who have access to the surveillance room to the processor. The pharmaceutical processor shall keep all onsite surveillance rooms locked and shall not use such rooms for any other function.

F. If diversion, theft, or loss of Cannabis plants, seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil has occurred from a pharmaceutical processor, the board may require additional safeguards to ensure the security of the products.

18VAC110-60-250. Requirements for the storage and handling of Cannabis, cannabidiol oil, or THC-A oil.

A. A pharmaceutical processor shall:

1. Have storage areas that provide adequate lighting, ventilation, sanitation, temperature, and humidity as defined in 18VAC110-60-10 and space, equipment, and security conditions for the cultivation of Cannabis and the production and dispensing of cannabidiol oil or THC-A oil;

2. Separate for storage in a quarantined area Cannabis plants, seeds, parts of plants, extracts, including cannabidiol oil or THC-A oil, that is outdated, damaged, deteriorated, misbranded, or adulterated, or whose containers or packaging have been opened or breached, until such Cannabis plants, seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil are destroyed;

3. Be maintained in a clean, sanitary, and orderly condition; and

4. Be free from infestation by insects, rodents, birds, or vermin of any kind.

B. A processor shall compartmentalize all areas in the facility based on function and shall restrict access between compartments. The processor shall establish, maintain, and comply with written policies and procedures regarding best practices for the secure and proper cultivation of Cannabis and production of cannabidiol oil or THC-A oil. These shall include policies and procedures that:

1. Restrict movement between compartments;

2. Provide for different colored identification cards for facility employees based on the compartment to which they are assigned at a given time so as to ensure that only employees necessary for a particular function have access to that compartment of the facility;

3. Require pocketless clothing for all production facility employees working in an area containing Cannabis plants, seeds, and extracts, including cannabidiol oil or THC-A oil; and

4. Document the chain of custody of all Cannabis plants, parts of plants, seeds, extracts, cannabidiol oil, and THC-A oil products.

C. The PIC shall establish, maintain, and comply with written policies and procedures for the cultivation, production, security, storage, and inventory of Cannabis, including seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil. Such policies and procedures shall include methods for identifying, recording, and reporting diversion, theft, or loss, and for correcting all errors and inaccuracies in inventories. Pharmaceutical processors shall include in their written policies and procedures a process for the following:

1. Handling mandatory and voluntary recalls of cannabidiol oil or THC-A oil. The process shall be adequate to deal with recalls due to any action initiated at the request of the board and any voluntary action by the pharmaceutical processor to (i) remove defective or potentially defective cannabidiol oil or THC-A oil from the market or (ii) promote public health and safety by replacing existing cannabidiol oil or THC-A oil with improved products or packaging;

2. Preparing for, protecting against, and handling any crises that affect the security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

3. Ensuring that any outdated, damaged, deteriorated, misbranded, or adulterated Cannabis, including seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil, is segregated from all other Cannabis, seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil and destroyed. This procedure shall provide for written documentation of the Cannabis, including seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil disposition; and

4. Ensuring the oldest stock of Cannabis, including seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil product is used first. The procedure may permit deviation from this requirement if such deviation is temporary and appropriate.

D. The processor shall store all Cannabis, including seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil, in the process of production, transfer, or analysis in such a manner as to prevent diversion, theft, or loss; shall make Cannabis, including the seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil accessible only to the minimum number of specifically authorized employees essential for efficient operation; and shall return the aforementioned items to their secure location immediately after completion of the production, transfer, or analysis process or at the end of the scheduled business day. If a production process cannot be completed at the end of a working day, the pharmacist shall securely lock the processing area or tanks, vessels, bins, or bulk containers containing Cannabis, including the seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil, inside an area or building that affords adequate security.

18VAC110-60-260. Recordkeeping requirements.

A. If a pharmaceutical processor uses an electronic system for the storage and retrieval of patient information or other records related to cultivating, producing, and dispensing cannabidiol oil or THC-A oil, the pharmaceutical processor shall use a system that:

1. Guarantees the confidentiality of the information contained in the system;

2. Is capable of providing safeguards against erasures and unauthorized changes in data after the information has been entered and verified by the pharmacist; and

3. Is capable of being reconstructed in the event of a computer malfunction or accident resulting in the destruction of the data bank.

B. All records relating to the inventory, laboratory results, and dispensing shall be maintained for a period of three years and shall be made available to the board upon request.

18VAC110-60-270. Reportable events; security.

A. Upon becoming aware of (i) diversion, theft, loss, or discrepancies identified during inventory; (ii) unauthorized destruction of any cannabidiol oil or THC-A oil; or (iii) any loss or unauthorized alteration of records related to cannabidiol oil or THC-A oil or qualifying patients, a pharmacist or pharmaceutical processor shall immediately notify appropriate law-enforcement authorities and the board.

B. A pharmacist or processor shall provide the notice required by subsection A of this section to the board by way of a signed statement that details the circumstances of the event, including an accurate inventory of the quantity and brand names of cannabidiol oil or THC-A oil diverted, stolen, lost, destroyed, or damaged and confirmation that the local law-enforcement authorities were notified. A pharmacist or processor shall make such notice no later than 24 hours after discovery of the event.

C. A pharmacist or pharmaceutical processor shall notify the board no later than the next business day, followed by written notification no later than 10 business days, of any of the following:

1. An alarm activation or other event that requires a response by public safety personnel;

2. A breach of security;

3. The failure of the security alarm system due to a loss of electrical support or mechanical malfunction that is expected to last longer than eight hours; and

4. Corrective measures taken if any.

D. A pharmacist or pharmaceutical processor shall immediately notify the board of an employee convicted of a felony or any offense referenced in § 54.1-3442.6 of the Code of Virginia.

Part VI
Cultivation, Production, and Dispensing of Cannabidiol Oil or THC-A Oil

18VAC110-60-280. Cultivation and production of cannabidiol oil or THC-A oil.

A. No cannabidiol oil or THC-A oil shall have had pesticide chemicals or petroleum-based solvents used during the cultivation, extraction, production, or manufacturing process, except that the board may authorize the use of pesticide chemicals for purposes of addressing an infestation that could result in a catastrophic loss of Cannabis crops.

B. Cultivation methods for Cannabis plants and extraction methods used to produce the cannabidiol oil and THC-A shall be performed in a manner deemed safe and effective based on current standards or scientific literature.

C. Any Cannabis plant, seed, parts of plant, extract, cannabidiol oil, or THC-A oil not in compliance with this section shall be deemed adulterated.

18VAC110-60-285. Registration of products.

A. A pharmaceutical processor shall assign a brand name to each product of cannabidiol oil or THC-A oil. The pharmaceutical processor shall register each brand name with the board on a form prescribed by the board prior to any dispensing and shall associate each brand name with a specific laboratory test that includes a terpenes profile and a list of all active ingredients, including:

1. Tetrahydrocannabinol (THC);

2. Tetrahydrocannabinol acid (THC-A);

3. Cannabidiols (CBD); [and]

4. Cannabidiolic acid (CBDA) [~~; and~~

~~5. Any other active ingredient that constitutes at least 1.0% of the batch used in the product~~].

B. A pharmaceutical processor shall not label two products with the same brand name unless the laboratory test results for each product indicate that they contain the same level of each active ingredient listed in subsection A of this section within a range of [~~97% to 103%~~ 90% to 110%].

C. The board shall not register any brand name that:

1. Is identical to or confusingly similar to the name of an existing commercially available product;

2. Is identical to or confusingly similar to the name of an unlawful product or substance;

3. Is confusingly similar to the name of a previously approved cannabidiol oil or THC-A oil product brand name;

4. Is obscene or indecent;

5. May encourage the use of marijuana, cannabidiol oil, or THC-A oil for recreational purposes;

6. May encourage the use of cannabidiol oil or THC-A oil for a disease or condition other than the disease or condition the practitioner intended to treat;

7. Is customarily associated with persons younger than the age of 18; or

8. Is related to the benefits, safety, or efficacy of the cannabidiol oil or THC-A oil product unless supported by substantial evidence or substantial clinical data.

18VAC110-60-290. Labeling of batch of cannabidiol oil or THC-A oil products.

A. Cannabidiol oil or THC-A oil produced as a batch shall not be adulterated.

B. Cannabidiol oil or THC-A oil produced as a batch shall be:

1. Processed, packaged, and labeled according to the U.S. Food and Drug Administration's Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements, 21 CFR Part 111; and

2. Labeled with:

a. The name and address of the pharmaceutical processor;

b. The brand name of the cannabidiol oil or THC-A oil product that was registered with the board pursuant to 18VAC110-20-285;

c. A unique serial number that matches the product with the pharmaceutical processor batch and lot number so as to facilitate any warnings or recalls the board or pharmaceutical processor deem appropriate;

d. The date of testing and packaging;

e. The expiration date [based on stability testing];

f. The quantity of cannabidiol oil or THC-A oil contained in the batch;

g. A terpenes profile and a list of all active ingredients, including:

(1) Tetrahydrocannabinol (THC);

(2) Tetrahydrocannabinol acid (THC-A);

(3) Cannabidiol (CBD); [and]

(4) Cannabidiolic acid (CBDA); and

[~~(5) Any other active ingredient that constitutes at least 1.0% of the batch used in the product; and~~]

h. A pass or fail rating based on the laboratory's microbiological, mycotoxins, [~~and~~] heavy metals [, residual solvents,] and pesticide chemical residue analysis.

[~~18VAC110-60-295. Labeling of dispensed cannabidiol oil or THC-A oil.~~

~~A. A pharmaceutical processor shall label each cannabidiol oil or THC-A oil product prior to dispensing by a pharmacist and shall securely affix to the package a label that states in legible English:~~

~~1. The brand name of the cannabidiol oil or THC-A oil that was registered with the board pursuant to 18VAC110-20-285;~~

~~2. A serial number as assigned by the pharmaceutical processor;~~

~~3. The date of dispensing the cannabidiol oil or THC-A oil;~~

~~4. An appropriate expiration date, not to exceed six months;~~

~~5. The quantity of cannabidiol oil or THC-A oil contained in the package;~~

~~6. A terpenes profile and a list of all active ingredients, including:~~

~~a. Tetrahydrocannabinol (THC);~~

~~b. Tetrahydrocannabinol acid (THC-A); and~~

~~c. Cannabidiol (CBD);~~

~~7. A pass or fail rating based on the laboratory's microbiological, mycotoxins, heavy metals, and chemical residue analysis;~~

~~8. The name and registration number of the qualifying patient;~~

~~9. The name of the certifying practitioner;~~

~~10. Directions for use as may be included in the practitioner's written certification or otherwise provided by the practitioner;~~

~~11. Name and address of the pharmaceutical processor; and~~

~~12. Any cautionary statement required by statute or regulation.~~

~~B. No person except a pharmacist or pharmacist technician under the direct supervision of a pharmacist at the pharmaceutical processor shall alter, deface, or remove any label so affixed.~~

~~C. A pharmaceutical processor shall not label cannabidiol oil or THC-A oil products as "organic" unless the Cannabis plants have been organically grown and the cannabidiol oil or THC-A oil products have been produced, processed, manufactured, and certified to be consistent with organic standards in compliance with 7 CFR Part 205.~~]

18VAC110-60-300. Laboratory requirements; testing.

A. No pharmaceutical processor shall utilize a laboratory to handle, test, or analyze cannabidiol oil or THC-A oil unless such laboratory:

1. Is independent from all other persons involved in the cannabidiol oil or THC-A oil industry in Virginia, which shall mean that no person with a direct or indirect interest in the laboratory shall have a direct or indirect financial interest in a pharmacist, pharmaceutical processor, certifying practitioner, or any other entity that may benefit from the production, manufacture, dispensing, sale, purchase, or use of cannabidiol oil or THC-A oil; and

2. Has employed at least one person to oversee and be responsible for the laboratory testing who has earned from a college or university accredited by a national or regional certifying authority at least (i) a master's level degree in chemical or biological sciences and a minimum of two years of post-degree laboratory experience or (ii) a bachelor's degree in chemical or biological sciences and a minimum of four years of post-degree laboratory experience.

B. [~~Immediately prior to producing any~~ After processing and before dispensing the] cannabidiol oil or THC-A oil product, a pharmaceutical processor shall [~~segregate all harvested Cannabis into homogenized batches. A pharmaceutical processor shall~~] make a sample available from each batch [of product] for a laboratory to (i) test for microbiological contaminants, mycotoxins, heavy metals, [residual solvents,] and pesticide chemical residue and (ii) conduct an active ingredient analysis [and terpenes profile. The sample size shall be a statistically valid sample as determined by the board].

C. From the time that a batch of [~~Cannabis~~ cannabidiol oil or THC-A oil product] has been homogenized for sample testing [~~and eventual packaging.~~] until the laboratory provides the results from its tests and analysis, the pharmaceutical processor shall segregate and withhold from use the entire batch [~~of Cannabis~~], except the samples that have been removed by the laboratory for testing. During this period of segregation, the pharmaceutical processor shall maintain the [~~Cannabis~~ batch] in a secure, cool, and dry location so as to prevent the [~~Cannabis~~ batch] from becoming contaminated or losing its efficacy.

D. Under no circumstances shall a pharmaceutical processor [~~include Cannabis in a cannabidiol oil or THC-A oil product or sell it~~ sell a cannabidiol oil or THC-A oil product] prior to the time that the laboratory has completed its testing and analysis and provided a certificate of analysis to the pharmaceutical processor or other designated facility employee.

E. The processor shall require the laboratory to immediately return or properly dispose of any [~~Cannabis~~ cannabidiol or THC-A oil] products and materials upon the completion of any testing, use, or research.

F. If a sample of [~~Cannabis~~ cannabidiol oil or THC-A oil product] does not pass the microbiological, mycotoxin, heavy metal, or pesticide chemical residue test based on the standards set forth in this subsection, the pharmaceutical processor shall dispose of the entire batch from which the sample was taken.

1. For purposes of the microbiological test, a cannabidiol oil or THC-A oil sample shall be deemed to have passed if it satisfies the standards set forth in Section 1111 of the United States Pharmacopeia.

2. For purposes of the mycotoxin test, a [~~Cannabis~~] sample [of cannabidiol oil or THC-A oil product] shall be deemed to have passed if it meets the following standards:

Test Specification	
Aflatoxin B1	<20 ug/kg of Substance
Aflatoxin B2	<20 ug/kg of Substance
Aflatoxin G1	<20 ug/kg of Substance
Aflatoxin G2	<20 ug/kg of Substance
Ochratoxin A	<20 ug/kg of Substance

3. For purposes of the heavy metal test, a [~~Cannabis~~] sample [of cannabidiol oil or THC-A oil product] shall be deemed to have passed if it meets the following standards:

Metal	[~~Natural Health Products Acceptable Limits ug/kg body weight/Day~~ Limits - parts per million (ppm)]
Arsenic	[~~<0.14~~ <10 ppm

Cadmium	~~<0.09~~ <4.1 ppm
Lead	~~<0.29~~ <10 ppm
Mercury	~~<0.29~~ <2 ppm]

4. For purposes of the pesticide chemical residue test, a [~~Cannabis~~] sample [of cannabidiol oil or THC-A oil product] shall be deemed to have passed if it satisfies the most stringent acceptable standard for a pesticide chemical residue in any food item as set forth in Subpart C of the federal Environmental Protection Agency's regulations for Tolerances and Exemptions for Pesticide Chemical Residues in Food, 40 CFR Part 180.

[5. For purposes of the active ingredient analysis, a sample of the cannabidiol oil or THC-A oil product shall be tested for:

a. Tetrahydrocannabinol (THC);

b. Tetrahydrocannabinol acid (THC-A);

c. Cannabidiols (CBD); and

d. Cannabidiolic acid (CBDA).

6. For the purposes of the residual solvent test, a sample of the cannabidiol oil or THC-A oil product shall be deemed to have passed if it meets the standards and limits recommended by the American Herbal Pharmacopia for Cannabis Inflorescence. If a sample does not pass the residual solvents test, the batch can be remediated with further processing. After further processing, the batch must be retested for microbiological, mycotoxin, heavy metal, residual solvents, and pesticide chemical residue, and an active ingredient analysis and terpenes profile must be conducted.]

G. If a sample of [~~Cannabis~~ cannabidiol oil or THC-A oil product] passes the microbiological, mycotoxin, heavy metal, [residual solvent,] and pesticide chemical residue test, the entire batch may be utilized by the processor for immediate [~~manufacturing.~~] packaging [,] and labeling for sale. [An expiration date shall be assigned to the product that is based upon validated stability testing that addresses product stability when opened and the shelf-life for unopened products.]

H. The processor shall require the laboratory to file with the board an electronic copy of each laboratory test result for any batch that does not pass the microbiological, mycotoxin, heavy metal, [residual solvents,] or pesticide chemical residue test at the same time that it transmits those results to the pharmaceutical processor. In addition, the laboratory shall maintain the laboratory test results and make them available to the board or an agent of the board.

I. Each pharmaceutical processor shall have such laboratory results available upon request to registered patients, parents, or legal guardians and registered practitioners who have certified qualifying patients.

18VAC110-60-310. Dispensing of cannabidiol oil or THC-A oil.

A. A pharmacist in good faith may dispense cannabidiol oil or THC-A oil to any registered patient, parent, or legal guardian as indicated on the written certification.

1. Prior to the initial dispensing of oil pursuant to each written certification, the pharmacist or pharmacy technician at the location of the pharmaceutical processor shall view a current photo identification of the patient, parent, or legal guardian. The pharmacist or pharmacy technician shall verify in the Virginia Prescription Monitoring Program of the Department of Health Professions or other program recognized by the board that the registrations are current, the written certification has not expired, and the date and quantity of the last dispensing of cannabidiol oil or THC-A oil to the registered patient.

2. The pharmacist or pharmacy technician shall make and maintain for [~~two~~ three] years a paper or electronic copy of the current written certification that provides an exact image of the document that is clearly legible.

3. Prior to any subsequent dispensing, the pharmacist, pharmacy technician, or delivery agent shall view the current written certification and a current photo identification and current registration of the patient, parent, or legal guardian and shall maintain record of such viewing in accordance with policies and procedures of the processor.

B. A pharmacist may dispense a portion of a registered patient's 90-day supply of cannabidiol oil or THC-A oil. The pharmacist may dispense the remaining portion of the 90-day supply of cannabidiol oil or THC-A oil at any time except that no registered patient, parent, or legal guardian shall receive more than a 90-day supply of cannabidiol oil or THC-A oil in a 90-day period from any pharmaceutical processor.

C. A dispensing record shall be maintained for three years from the date of dispensing, and the pharmacist or pharmacy technician under the direct supervision of the pharmacist shall affix a label to the container of oil that contains:

1. A serial number assigned to the dispensing of the oil;

2. The [brand] name [~~or kind~~] of cannabidiol oil or THC-A oil [that was registered with the board pursuant to 18VAC110-60-285] and its strength;

3. The serial number assigned to the oil during production;

4. The date of dispensing the cannabidiol oil or THC-A oil;

5. The quantity of cannabidiol oil or THC-A oil dispensed [~~which cannot exceed 60 fluid ounces~~];

[6. A terpenes profile and a list of all active ingredients, including:

a. Tetrahydrocannabinol (THC);

b. Tetrahydrocannabinol acid (THC-A);

c. Cannabidiol (CBD); and

d. Cannabidiolic acid (CBDA);

7. A pass rating based on the laboratory's microbiological, mycotoxins, heavy metals, residual solvents, and pesticide chemical residue analysis;

~~6.~~ 8.] The name and registration number of the registered patient;

[~~7.~~ 9.] The name and registration number of the certifying practitioner;

[~~8.~~ 10.] Directions for use as may be included in the practitioner's written certification or otherwise provided by the practitioner;

[~~9.~~ 11.] The name or initials of the dispensing pharmacist;

[~~10.~~ 12.] Name, address, and telephone number of the pharmaceutical processor;

[~~11.~~ 13.] Any necessary cautionary statement; and

[~~12.~~ 14.] A prominently printed expiration date based on [stability testing and] the pharmaceutical processor's recommended conditions of use and storage that can be read and understood by the ordinary individual.

D. [A pharmaceutical processor shall not label cannabidiol oil or THC-A oil products as "organic" unless the Cannabis plants have been organically grown and the cannabidiol oil or THC-A oil products have been produced, processed, manufactured, and certified to be consistent with organic standards in compliance with 7 CFR Part 205.

E.] The cannabidiol oil or THC-A oil shall be dispensed in child-resistant packaging, except as provided in 18VAC110-60-210 A. A package shall be deemed child-resistant if it satisfies the standard for "special packaging" as set forth in the Poison Prevention Packaging Act of 1970 Regulations, 16 CFR 1700.1(b)(4).

[~~E.~~ F.] No person except a pharmacist or a pharmacy technician operating under the direct supervision of a pharmacist shall alter, deface, or remove any label so affixed.

[~~F.~~ G.] A pharmacist shall be responsible for verifying the accuracy of the dispensed oil in all respects prior to dispensing and shall document that each verification has been performed.

[~~G.~~ H.] A pharmacist shall document a registered patient's self-assessment of the effects of cannabidiol oil or THC-A oil in treating the registered patient's diagnosed condition or disease or the symptoms thereof. A pharmaceutical processor shall maintain such documentation in writing or electronically for [~~two~~ three] years from the date of dispensing and such documentation shall be made available in accordance with regulation.

[~~H.~~ I.] A pharmacist shall exercise professional judgment to determine whether to dispense cannabidiol oil or THC-A oil to a registered patient, parent, or legal guardian if the pharmacist suspects that dispensing cannabidiol oil or THC-A oil to the registered patient, parent, or legal guardian may have negative health or safety consequences for the registered patient or the public.

18VAC110-60-320. Dispensing error review and reporting; quality assurance program.

A. A pharmaceutical processor shall implement and comply with a quality assurance program that describes, in writing, policies and procedures to detect, identify, and prevent dispensing errors. A pharmaceutical processor shall distribute the written policies and procedures to all pharmaceutical processor employees and shall make the written policies and procedures readily available on the premises of the pharmaceutical processor. The policies and procedures shall include:

1. Directions for communicating the details of a dispensing error to the practitioner who certified a qualifying patient and to the qualifying patient, the patient's parent or legal guardian or appropriate family member if the patient is deceased or is unable to fully comprehend the communication. The communication shall describe methods of correcting the dispensing error or reducing the negative impact of the error on the qualifying patient; and

2. A process to document and assess dispensing errors to determine the cause of the error and an appropriate response.

B. A pharmaceutical processor shall use the findings of its quality assurance program to develop systems and workflow processes designed to prevent dispensing errors. A pharmaceutical processor PIC shall:

1. Inform pharmaceutical processor employees of changes to policy, procedure, systems, or processes made as a result of recommendations generated by the quality assurance program;

2. Notify all processor employees that the discovery or reporting of a dispensing error shall be relayed immediately to a pharmacist on duty;

3. Ensure that a pharmacist performs a quality assurance review for each dispensing error. A pharmacist shall commence such review as soon as is reasonably possible, but no later than two business days from the date the dispensing error is discovered; and

4. Create a record of every quality assurance review. This record shall contain at least the following:

a. The date of the quality assurance review and the names and titles of the persons performing the review;

b. The pertinent data and other information relating to the dispensing error reviewed;

c. Documentation of contact with the registered patient, parent, or legal guardian where applicable, and the practitioner who certified the patient;

d. The findings and determinations generated by the quality assurance review; and

e. Recommended changes to pharmaceutical processor policy, procedure, systems, or processes if any.

C. A pharmaceutical processor shall maintain for three years a copy of the pharmaceutical processor's quality assurance program and records of all reported dispensing errors and quality assurance reviews in an orderly manner and filed by date.

18VAC110-60-330. Disposal of cannabidiol oil or THC-A oil.

A. To mitigate the risk of diversion, a pharmaceutical processor shall routinely and promptly dispose of undesired, excess, unauthorized, obsolete, adulterated, misbranded, or deteriorated Cannabis plants, including seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil by disposal in accordance with a plan approved by the board and in a manner as to render the cannabidiol oil or THC-A oil nonrecoverable.

B. The destruction shall be witnessed by the PIC and an agent of the board or another pharmacist not employed by the pharmaceutical processor. The persons disposing of the cannabidiol oil or THC-A oil shall maintain and make available a separate record of each such disposal indicating:

1. The date and time of disposal;

2. The manner of disposal;

3. The name and quantity of cannabidiol oil or THC-A oil disposed of; and

4. The signatures of the persons disposing of the cannabidiol oil or THC-A oil.

C. The record of disposal shall be maintained at the pharmaceutical processor for three years from the date of disposal.

NOTICE: The following forms used in administering the regulation are not being published. The forms are available in electronic form only online at the listed website. Questions regarding the agency forms should be directed to the agency contact.

FORMS (18VAC110-60)

Application for registration of a patient, online form available at https://www.license.dhp.virginia.gov/apply

Application for registration of a parent or legal guardian, online form available at https://www.license.dhp.virginia.gov/apply

Application for registration of a practitioner to issue certifications, online form available at https://www.license.dhp.virginia.gov/apply

[~~Application for a pharmaceutical processor~~ Application for Pharmaceutical Processor Permit (eff. 6/2019)

Patient Parent or Legal Guardian Reporting Requirements (eff. 6/2019)

Practitioner Reporting Requirements (eff. 6/2019)

Registration of CBD or THC-A Oil Products (eff. 6/2019)]

VA.R. Doc. No. R17-4878; Filed June 14, 2019, 12:42 p.m.

BOARD OF VETERINARY MEDICINE

Forms

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

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

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

FORMS (18VAC150-20)

~~Licensure Procedure for Veterinarians (rev. 8/07).~~

~~Application for a License to Practice Veterinary Medicine (rev. 8/09).~~

~~Instructions to the Applicant for Licensure by Examination as a Veterinary Technician (rev. 4/09).~~

~~Instructions to the Veterinary Technician Licensure Applicant (rev. 7/11).~~

~~Application for a License to Practice Veterinary Technology (rev. 8/09).~~

~~Applicant Instructions for New, Upgrading to Full Service, or Change of Location Inspections (rev. 8/07).~~

~~Application for Veterinary Establishment Permit (rev. 8/09).~~

~~Application for Reinstatement (rev. 8/09).~~

~~Licensure Verification - Veterinarian (rev. 7/11).~~

~~Licensure Verification - Veterinary Technician (rev. 9/07).~~

~~Application for Registration for Volunteer Practice (rev. 8/07).~~

~~Sponsor Certification for Volunteer Registration (rev. 8/07).~~

~~Application for Registration to Practice as an Equine Dental Technician (eff. 11/07).~~

~~Recommendation for Registration as a Equine Dental Technician (eff. 11/07).~~

~~Registrants Inventory of Drugs Surrendered, Form DEA 41 (eff. 9/01).~~

Instructions for Licensure to Practice Veterinary Medicine (rev. 5/2019)

Application for a License to Practice Veterinary Medicine online form available at https://www.dhp.virginia.gov/vet/vet_forms.htm.

Instructions for Licensure to Practice Veterinary Technology (rev. 5/2019)

Application for a License to Practice Veterinary Technology online form available at https://www.dhp.virginia.gov/vet/vet_forms.htm.

Checklist and Application for Veterinary Establishment Permit (rev. 5/2019)

Change in Veterinarian-in-Charge Form (rev. 5/2019)

Veterinary Establishment Closure Form (rev. 5/2019)

Application for Reinstatement (rev. 5/2019)

Application Licensure Verification (rev. 5/2019)

Employment Verification Form (rev. 5/2019)

Name/Address Change Form (rev. 5/2019)

Application for Registration for Volunteer Practice (rev. 5/2019)

Sponsor Certification for Volunteer Registration (rev. 5/2019)

Continuing Education Credit Form for Volunteer Practice (rev. 5/2019)

Application for Registration to Practice as an Equine Dental Technician (rev. 5/2019)

Recommendation for Registration as an Equine Dental Technician (rev. 5/2019)

VA.R. Doc. No. R19-6045; Filed June 12, 2019, 11:00 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Fast-Track Regulation

Title of Regulation: **22VAC40-730. Investigation of Child Abuse and Neglect in Out of Family Complaints (amending 22VAC40-730-10, 22VAC40-730-20, 22VAC40-730-40, 22VAC40-730-70, 22VAC40-730-115, 22VAC40-730-120, 22VAC40-730-130; adding 22VAC40-730-140).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 7, 2019.

Effective Date: August 23, 2019.

Agency Contact: Shannon Hartung, Child Protective Services Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7554, FAX (804) 726-7499, or email shannon.hartung1@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia gives the State Board of Social Services the responsibility to make rules and regulations to administer social services in the Commonwealth under Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 of the Code of Virginia. Sections 63.2-1506, 63.2-1511, and 63.2-1516.1 of the Code of Virginia provide additional legal mandates for child protective services investigations in out of family settings.

Purpose: The regulatory action is essential to protect the health, safety, and welfare of citizens because it addresses provisions governing the investigation of child abuse and neglect in out of family settings. The regulation is being amended to be consistent with Child Protective Services (22VAC40-705), the Code of Virginia, and applicable federal law. The amendments update the regulation to provide clarification and conform with the requirements of "Form, Style, and Procedure Manual for Publication of Virginia Regulations."

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is appropriate for this regulatory action because the changes being made are simple and intended to update and clarify language in the regulation. It is unlikely anyone would oppose these changes.

Substance: The amendments to existing provisions and that add new provisions comport the regulation with 22VAC40-705, the Code of Virginia, and applicable federal law.

Substantive changes include:

• Updating the definition of "child day program" to mirror the language in § 63.2-100 of the Code of Virginia;

• Adding a definition of "child-placing agency" and "foster home";

• Updating the definition of "facility" to clarify that child day programs include both licensed and religiously-exempt programs;

• Updating language in the definition of "residential facility";

• Updating training requirements for staff qualified to conduct out of family (OOF) investigations;

• Adding specific language from § 63.2-1511 A of the Code of Virginia regarding investigations involving school employees;

• Repealing 22VAC40-730-120, Monitoring of cases for compliance;

• Adding 22VAC40-730-140 on the protocol for OOF investigations consistent with 22VAC40-705; and

• Adding specific language from § 63.2-1503 M of the Code of Virginia regarding the rights of an alleged abuser or neglector who has been criminally charged for the same conduct.

Issues: This regulatory action clarifies and updates existing language, which is an advantage to the public and to the local departments of social services who are required to use this regulation when conducting investigations of child abuse or neglect in OOF settings. There are no disadvantages to the public or the Commonwealth.

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

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Following a periodic review,[1] the State Board of Social Services proposes to clarify regulatory language.

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

Estimated Economic Impact. The proposed changes do not modify any of the current standards or procedures, but clarify them. The changes include updating the definition of "child day program" to mirror the language in § 63.2-100 of the Code of Virginia; adding a definition of "child-placing agency" and "foster home"; updating the definition of "facility" to clarify that child day programs include both licensed and religiously-exempt programs; updating language in the definition of "residential facility"; updating language on training requirements for staff qualified to conduct out of family investigations to reflect current practices; adding specific language from § 63.2-1511 A of the Code of Virginia regarding out of family investigations involving school employees; repealing duplicative language regarding monitoring of cases for compliance; adding new language to reflect the existing protocol for investigations; and adding specific language from § 63.2-1503 M of the Code of Virginia regarding the rights of an alleged abuser or neglector who has been criminally charged for the same conduct. These proposed amendments would be beneficial in that they improve the clarity of requirements and procedures in effect.

Businesses and Entities Affected. This regulation sets out criteria and procedures for 120 local departments of social services on how they conduct out of family investigations. There were 1,288 out of family investigations conducted in fiscal year 2018.

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 affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendments would not adversely affect businesses.

Localities. The proposed amendments would not likely affect localities.

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

---

[1] http://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1676

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

Summary:

Amendments (i) update the definition of "child day program" to mirror the language in § 63.2-100 of the Code of Virginia; (ii) add a definition of "child-placing agency"

and a definition of "foster home"; (iii) update the definition of "facility" to clarify that child day programs include both licensed and religiously exempt programs; (iv) update the definition of "residential facility"; (v) update training requirements for staff qualified to conduct out of family investigations; (vi) add specific language from § 63.2-1511 A of the Code of Virginia regarding investigations involving school employees; (vii) repeal 22VAC40-730-120, which deals with monitoring out of family cases for compliance; (viii) add 22VAC40-730-140, which deals with the protocol for out of family investigations, consistent with 22VAC40-705; and (ix) add specific language from § 63.2-1503 M of the Code of Virginia regarding the rights of an alleged abuser or neglector who has been criminally charged for the same conduct.

~~Part I~~
~~Definitions~~

22VAC40-730-10. Definitions.

In addition to the definitions contained in 22VAC40-705-10, the following words and terms when used in conjunction with this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of ~~children as defined in § 63.2-100 of the Code of Virginia~~ a child younger than 13 years of age for less than a 24-hour period.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Facility" means the generic term used to describe the setting in out of family abuse or neglect and for the purposes of this regulation includes schools (public and private), private or state-operated hospitals or institutions, licensed or religiously exempted child day programs, and residential facilities.

"Facility administrator" means the on-site individual responsible for the day-to-day operation of the facility.

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

"Participate" means to take part in the activities of the joint investigation as per a plan for investigation developed by the CPS worker with the facility administrator or regulatory authority or both.

"Physical plant" means the physical ~~structure/premises~~ structure or premises of the facility.

"Regulatory authority" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a facility for children.

"Residential facility" means a publicly or privately owned facility, other than a private family home, where 24-hour care, maintenance, protection, and guidance is provided to children separated from their parents or legal guardians, that is subject to licensure or certification pursuant to the provisions of the Code of Virginia ~~and includes, but is not limited to, group homes, secure facilities, temporary care facilities, and respite care facilities~~.

~~Part II~~
~~Policy~~

~~Article 1~~
~~Out of Family Investigation Policy~~

22VAC40-730-20. General.

~~Valid~~ For the purpose of this chapter, valid complaints of child abuse or neglect involving ~~caretakers in out of family settings are for the purpose of this chapter valid complaints in state licensed and religiously exempted child day programs, private and public schools, residential facilities, hospitals, or institutions. These valid~~ complaints in a facility or foster home shall be investigated by qualified staff employed by local departments of social services.

Staff shall be determined to be qualified based on ~~criteria identified~~ completion of an out of family training course as approved by the department. ~~All staff involved in investigating a valid complaint must be qualified.~~

This regulation is limited in scope to the topics contained ~~herein~~ in this chapter. All issues regarding investigations, findings, and appeals are found in Child Protective Services, 22VAC40-705, and as such are cross referenced and incorporated into and apply to out of family cases to the extent that they are not inconsistent with this regulation.

~~In addition to the authorities and the responsibilities specified in department policy for all child protective services investigations, the policy for investigations in out of family settings is set out in 22VAC40-730-30 through 22VAC40-730-130.~~

22VAC40-730-40. Involvement of regulatory agencies.

The authority of the local department to investigate valid complaints of alleged child abuse or neglect in ~~regulated~~ facilities or foster homes overlaps with the authority of the

public agencies ~~which~~ that have regulatory responsibilities for these facilities to investigate alleged violations of standards.

1. For valid complaints ~~in state regulated facilities and religiously exempted child day programs~~, the local department shall contact the appropriate regulatory authority and share the ~~valid~~ complaint information. The regulatory authority will appoint a staff person to participate in the investigation to determine if there are regulatory concerns.

2. The ~~CPS~~ assigned child protective services (CPS) worker ~~assigned to investigate~~ and the appointed regulatory staff person will discuss their preliminary joint investigation plan.

a. The CPS worker and the regulatory staff person shall review their respective needs for information and plan the investigation based on when these needs coincide and can be met with joint interviews or with information sharing.

b. The investigation plan must keep in focus the ~~policy~~ requirements to be met by ~~each party~~ the CPS worker and regulatory authority as well as the impact the investigation will have on the facility's staff, the victim child ~~or children~~, and the other children at the facility.

22VAC40-730-70. Contact with the facility administrator.

A. The ~~CPS~~ child protective services (CPS) worker shall initiate contact with the facility administrator or designee at the onset of the investigation.

B. The CPS worker shall inform the facility administrator or ~~his~~ designee of the details of the valid complaint. When the administrator or designee chooses to participate in the joint investigation, he will be invited to participate in developing the plan for investigation, including decisions about who is to be present in interviews. If the administrator or designee is the alleged abuser or neglector, this contact should be initiated with the individual's superior, which may be the board of directors, ~~etc. If~~ or if there is no superior, the CPS worker may use discretion in sharing information with the administrator so long as such disclosure is consistent with and does not conflict with law or regulation.

C. Arrangements are to be made for:

1. Necessary interviews;

2. Observations including the physical plant; and

3. Access to information, including review of pertinent policies and procedures.

D. The CPS worker shall keep the facility administrator or designee apprised of the progress of the investigation. In a joint investigation with a regulatory staff person, either party may fulfill this requirement.

22VAC40-730-115. Procedures for conducting an investigation of a teacher, principal, or other person employed by a local school board or employed in a nonresidential school operated by the Commonwealth.

A. Each local department of social services and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.

B. These procedures for investigating school personnel amplify or clarify other Child Protection Services ~~(CPS)~~ regulations.

1. ~~In determining the validity of a report of suspected abuse or neglect pursuant to § 63.2-1511 of the Code of Virginia, the local department must consider whether the school employee used reasonable and necessary force. The use of reasonable and necessary force does not constitute a valid report~~ If a teacher, principal, or other person employed by a local school board or employed in a school operated by the Commonwealth is suspected of abusing or neglecting a child in the course of his educational employment, the complaint shall be investigated in accordance with §§ 63.2-1503, 63.2-1505, and 63.2-1516.1 of the Code of Virginia. Pursuant to § 22.1-279.1 of the Code of Virginia, no teacher, principal, or other person employed by a school board or employed in a school operated by the Commonwealth shall subject a student to corporal punishment. However, this prohibition of corporal punishment shall not be deemed to prevent (i) the use of incidental, minor, or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are upon the person of the student or within the student's control. In determining whether the actions of a teacher, principal, or other person employed by a school board or employed in a school operated by the Commonwealth are within the exceptions provided in this subsection, the local department shall examine whether the actions at the time of the event that were made by such person were reasonable.

~~2. The local department shall conduct a face-to-face interview with the person who is the subject of the valid complaint or report.~~

~~3. At the onset of the initial interview with the alleged abuser or neglector, the local department shall notify him in writing of the general nature of the valid complaint and the identity of the alleged child victim regarding the purpose of the contacts.~~

~~4. The written notification shall include the information that the alleged abuser or neglector has the right to have an attorney or other representative of his choice present during his interviews. However, the failure by a representative of the Department of Social Services to so advise the subject of the valid complaint shall not cause an otherwise voluntary statement to be inadmissible in a criminal proceeding.~~

~~5.~~ 2. If the local department determines that the alleged abuser's actions were within the scope of his employment and were taken in good faith in the course of supervision, care, or discipline of students, then the standard for determining a founded finding of abuse or neglect is whether such acts or omissions constituted gross negligence or willful misconduct.

~~6. Written notification of the findings shall be submitted to the alleged abuser or neglector. The notification shall include a summary of the investigation and an explanation of how the information gathered supports the disposition.~~

~~7. The written notification of the findings shall inform the alleged abuser or neglector of his right to appeal.~~

~~8. The written notification of the findings shall inform the alleged abuser or neglector of his right to review information about himself in the record with the following exceptions:~~

~~a. The identity of the person making the report.~~

~~b. Information provided by any law enforcement official.~~

~~c. Information that may endanger the well-being of the child.~~

~~d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.~~

~~No information shall be released by the local department in cases that are being criminally investigated unless the release is authorized by the investigating law enforcement officer or his supervisor or the local attorney for the Commonwealth.~~

22VAC40-730-120. ~~Monitoring of cases for compliance.~~ (Repealed.)

~~A sample of cases will be reviewed by department staff to ensure compliance with policies and procedures.~~

~~Article 2~~
~~Local Staff Qualifications in Out of Family Investigations~~

22VAC40-730-130. Requirements.

A. In order to be determined qualified to conduct investigations in out of family settings, local ~~CPS~~ child protective services (CPS) workers shall meet minimum education standards established by the department including~~:~~ ~~1. Documented competency in designated general knowledge and skills and specified out of family knowledge and skills; and 2. Completion~~ completion of an out of family ~~policy~~ training course as approved by the department.

B. The department and each local department shall maintain a roster of personnel determined qualified to conduct these out of family investigations.

22VAC40-730-140. Protocol for out of family investigations.

For out of family investigations, the following shall be completed, which are consistent with 22VAC40-705:

1. The local department shall conduct a face-to-face interview with the alleged abuser or neglector.

2. At the onset of the initial interview with the alleged abuser or neglector, the local department shall notify him in writing of the general nature of the valid complaint and the identity of the alleged child victim regarding the purpose of the contacts.

3. The written notification shall include the information that the alleged abuser or neglector has the right to have an attorney or other representative of his choice present during his interviews.

4. If the alleged abuser or neglector has been arrested, statements, or any evidence derived therefrom, made to local department child protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect, or death of a child after the arrest of such person shall not be used in evidence in the case-in-chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent; (ii) that anything he says may be used against him in a court of law; (iii) that he has a right to the presence of an attorney during any interviews; and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

5. The written notification of the findings shall inform the alleged abuser or neglector of his right to appeal.

6. The written notification of the findings shall inform the alleged abuser or neglector of his right to review information about himself in the record with the following exceptions:

a. The identity of the person making the report.

b. Information provided by any law-enforcement official.

c. Information that may endanger the well-being of the child.

d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.

7. No information shall be released by the local department in cases that are being criminally investigated unless the release is authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.

VA.R. Doc. No. R19-5668; Filed June 10, 2019, 11:50 a.m.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Fast-Track Regulation

Title of Regulation: **22VAC45-20. Regulations to Govern the Operation of Vending Facilities in Public Buildings and Other Property (amending 22VAC45-20-10, 22VAC45-20-110, 22VAC45-20-120).**

Statutory Authority: §§ 51.5-65 and 51.5-78 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 7, 2019.

Effective Date: August 23, 2019.

Agency Contact: Susan K. Davis, MS, CRC, Policy and Regulatory Coordinator, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23235, telephone (804) 371-3184, FAX (804) 371-3157, TTY (800) 371-3157, or email susan.davis@dbvi.virginia.gov.

Basis: The regulation is promulgated under the authority of §§ 51.5-65, 51.5-78, and 51.5-97 of the Code of Virginia. Section 51.5-65 grants the Commissioner of the Department for the Blind and Vision Impaired (DBVI) the legal authority to adopt regulations necessary to carry out the applicable provisions of Chapter 12 of Title 51.5 of the Code of Virginia. Section 51.5-78 authorizes the department to operate vending stands and other business enterprises in public and private buildings for providing blind persons with employment, enlarging the economic opportunities of the blind, and stimulating the blind to make themselves self-supporting. Section 51.5-97 directs the department to set aside or cause to be set aside from the net proceeds of the operations authorized by Article 4 (§§ 51.5-79 through 51.5-100) of Chapter 12 of Title 51.5 of the Code of Virginia such funds as may be necessary for the purposes of (i) maintenance and replacement of equipment, (ii) purchase of new equipment, (iii) management services, (iv) assuring a fair minimum return to vendors, and (v) the establishment and maintenance of retirement or pension funds, health insurance contributions, and the provision for paid sick leave and vacation time in accordance with the Randolph-Sheppard Act Amendment of 1974 (P.L. 93-516).

Purpose: The proposed amendments correct the definition of blind person, clarify the name of the agency to which the regulation refers, and improve the welfare of operators in the Virginia Enterprises for the Blind (VEB) by increasing the frequency of payments for their work from the current requirement of quarterly payments. Payments that are more frequent will allow for more timely cash flow management and income for the operators while not affecting the financial viability of the VEB. This change will enhance the mission of DBVI by allowing operators to be more independent and economically self-sufficient.

Rationale for Using Fast-Track Rulemaking Process: The agency, along with the VEB Vendors Council, recognized the importance of having flexibility to pay operators in a timelier manner that would be defined as "at least" quarterly rather than the more rigid payment schedule defined as "quarterly" in the existing regulations. Because this change is beneficial to operators, the regulatory action is expected to be noncontroversial. Though there is no specific mandate for this regulatory change, the phrase "at least" quarterly conforms to federal law.

Substance: The proposed substantive change adds only the words "at least" to two sections of the regulation, 22VAC45-20-110 and 22VAC45-20-120, providing for increased frequency of setting aside funds and distributing income to operators.

Issues: The primary advantage for private citizens who are operators in the VEB is that they will be able to receive their income more rapidly and no longer have to budget and manage their cash flow over a three-month period. There is no disadvantage to the vendors. The primary advantage to DBVI is that this change enhances its mission to improve the independence of people who are blind and aligns state law as to vending machines located on state property to language in the federal law, 34 CFR 395.8(b), which governs vending machines located on federal property. There is no disadvantage to the agency. This change is fully supported by the VEB Vendors Council, the governing body elected to represent the operators. There is no disadvantage to operators, the general public, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for the Blind and Vision Impaired (Board) proposes to: 1) change the stated frequency that the Department for the Blind and Vision Impaired (DBVI) will disburse vending

machine income to eligible blind vendors with prepared statements, 2) conform the definition of "blind person" in the regulation to the definition in the Code of Federal Regulations, and 3) update the name of the agency within the regulation.

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

Estimated Economic Impact. Under the current regulation DBVI "will disburse vending machine income to eligible blind vendors on a quarterly basis." Further, statements pertaining to the disbursement are prepared and rendered quarterly as well. The Board proposes to amend the language to indicate that the income will be disbursed and the statements will be rendered "at least" quarterly. According to the Department for the Blind and Vision Impaired, the intent is to pay vendors monthly. This would be beneficial for the blind vendors in that it would improve their cash flow.

The proposals to conform the definition of "blind person" to the definition in the Code of Federal Regulations and to update the name of the agency within the regulation do not change requirements in practice. Adopting these changes would improve clarity for the reader, but otherwise would have no impact.

Businesses and Entities Affected. The proposed amendments would particularly affect the approximate 48 licensed blind vending machine operators[1] in the Commonwealth. All of these vendors are likely 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 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 do 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 proposal to effectively speed the payment of income owed to licensed blind vending machine operators would reduce their costs associated with waiting for funds to use in their business.

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.

---

[1]Data source: Department for the Blind and Vision Impaired

Agency's Response to Economic Impact Analysis: The Department for the Blind and Vision Impaired concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

The amendments (i) correct the agency name in regulation text, (ii) update the definition of "blind person," and (iii) align the frequency of disbursements to vendors with federal regulations.

Part I
Introduction

22VAC45-20-10. Definitions.

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

"Act" means the Randolph-Sheppard Vending Stand Act (P.L. 74-732), as amended by P.L. 83-565 and P.L. 93-516, 20 USC, Chapter 6A, § 107.

"Blind licensee" means a blind person licensed by the state licensing agency to operate a vending stand or vending facility on public or other property.

"Blind person" means ~~the condition as defined in §§ 63.1-142 and 63.1-166 of the Code of Virginia~~ a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such person shall select, has been determined to have (i) not more than 20/200 central visual acuity in the better eye with correcting lenses, or (ii) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees pursuant to 34 CFR 395.1(c).

"Custodian" means any person or group of persons having the authority to grant permission for the installation and operation of vending facilities and vending stands.

"Department" or "DBVI" means the Department for the ~~Visually Handicapped~~ Blind and Vision Impaired.

"Direct competition" means the presence of an operation of a vending machine or a vending facility on the same premises

as a vending facility operated by a blind vendor. (Vending machines or vending facilities operated in areas where the majority of employees do not have direct access to the vending facility operated by a blind vendor, shall not be considered to be in direct competition with the vending facility operated by a blind vendor.)

~~"DVH" means the Department for the Visually Handicapped.~~

"License" means a written instrument issued by the state licensing agency to a blind person, authorizing such person to operate a vending facility or vending stand.

"Management services" means supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve vending facilities and vending stands operated by blind vendors. "Management services" does not include those services or costs which pertain to the ~~on-going~~ ongoing operating of an individual facility after the establishment period.

"Net proceeds" means the amount remaining from the sale of articles or services of vending facilities, vending stands, or other income accruing to blind vendors after deducting the cost of such sale and other expenses.

"Nominee" means a nonprofit agency or organization designated by a state licensing agency through a contractual arrangement to act as its agent in the provision of services to blind licensees.

"Permit" means the official approval given to a state licensing agency by a department, agency, or instrumentality in control of maintenance operation and protection of federal property, or person in control of public and private buildings and other properties, whereby the state licensing agency is authorized to establish a vending facility or vending stand.

"Program" means all the activities of the state licensing agency under this chapter related to public and private buildings and other properties throughout the Commonwealth.

"Public and private buildings and other properties throughout the Commonwealth" means buildings, land, or other property owned by or leased to the Commonwealth or a political subdivision, including a municipality, or a corporation or individual.

"Set aside funds" means funds which accrue to a state licensing agency from an assessment against the net proceeds of each vending facility or vending stand in the state's vending facility program and any income from vending machines on public and private buildings and other properties which accrue to the state licensing agency.

"State vocational rehabilitation agency" means the state agency designated by the Secretary of Education to issue licenses to blind persons for the operation of vending facilities and vending stands on public and private buildings and other properties throughout the Commonwealth.

"Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment ~~which~~ that may be operated by blind licensees and ~~which~~ that is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending for any lottery authorized by state law and conducted by an agency of a state within such state.

"Vending stand" means an installation in any public or private building for the sale of newspapers, periodicals, confections, tobacco products, soft drinks, ice cream, wrapped foods, and other such articles as may be approved by the custodian and the department.

"Vending machine" means a coin or currency operated machine ~~which~~ that dispenses articles or services, except that those machines operated by the United States Postal Service for the sale of stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

"Vending machine income" means receipts from public, private, and other property after deducting applicable costs where~~:~~ (i) the machines are operated by the property custodian, (ii) commissions are received by the property custodian, and (iii) an activity receives income from a commercial vending firm ~~which~~ that provides vending machines on the property with the approval of the property custodian.

"Vendor" means a blind licensee who is operating a vending facility or vending stand on federal property, in a public or private building, or on other property throughout the Commonwealth.

Part IV
Fiscal: Income and Distribution of Funds

22VAC45-20-110. Setting aside of funds

A. Funds will be set aside from the net proceeds of the operations of the vending facilities under the program and from retained vending machine income according to the formula submitted to and approved by the U.S. Commissioner of Rehabilitation Services Administration and the U.S. Secretary of Education in an amount determined to be reasonable.

B. These charges shall be assessed quarterly. Statements shall be prepared and rendered, along with settlement, to each blind vendor at least quarterly.

C. Moneys collected from the setting aside of funds shall be used solely for the following purposes:

1. Maintenance and replacement of equipment;

2. Purchase of new equipment;

3. Management services;

4. Assuring a fair minimum return to vendors; and

5. The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors licensed by the state licensing agency, after such agency provides to each vendor information on all matters relevant to such proposed purposes.

D. The charge for each of the listed purposes will be determined by the department on the basis of records or expenditures made for each of these purposes over a reasonable period of time, with allowances for reasonable charges for improving services, fluctuation in costs, and for program expansion. The charges shall be reviewed and approved by the commissioner of the department with the assistance of the operations management team. Charges will be reevaluated periodically and necessary adjustments made. Adequate records will be maintained by the department to support the reasonableness of the charge for each of the purposes listed, including any reserves necessary to assure that such purposes can be achieved on a consistent basis.

E. The policy on setting aside of funds shall be reviewed annually with the active participation of the vending facility vendors council.

22VAC45-20-120. Distribution and use of income from vending machines.

A. Income from vending machines (with the exception of revenues derived from the state highway vending program), shall accrue to each vendor operating a vending facility on such property. The amount shall not exceed the average net income of the total number of blind vendors within the Commonwealth as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind vendor in any amount exceeding the average net income of the total number of blind vendors in the United States.

B. No blind vendor shall receive less vending machine income than ~~he~~ that vendor was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

C. No limitation shall be imposed on income from vending machines combined to create a vending facility when such facility is maintained, serviced, or operated by a blind vendor.

D. The department will disburse vending machine income to eligible blind vendors on at least a quarterly basis.

E. The department shall retain vending machine income ~~which~~ that is in excess of the amount eligible to accrue to a blind vendor in a facility. Funds received from these facilities will be used for:

1. The establishment and maintenance of retirement or pension plan;

2. Contributions toward a health insurance program; and

3. The provision of paid sick leave and vacation time for blind licensees.

The purposes stated must be approved by a majority vote of the licensed vendors after each licensee has been furnished information relevant to such purpose.

F. Any vending machine income not necessary for such purposes shall be used for one or more of the following:

1. Maintenance and replacement of equipment;

2. Purchase of new equipment;

3. Management services; and

4. Assuring a fair minimum return to vendors.

~~F.~~ G. Any assessment charged to blind vendors shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

VA.R. Doc. No. R19-4668; Filed June 18, 2019, 4:04 p.m.

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.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Document: 2020 Virginia Telecommunication Initiative Program Guidelines and Criteria.

Public Comment Deadline: August 7, 2019.

Effective Date: August 8, 2019.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, or email kyle.flanders@dhcd.virginia.gov.

DEPARTMENT OF LABOR AND INDUSTRY

Title of Document: Field Operations Manual Chapter One Minimum Wage Act.

Public Comment Deadline: August 7, 2019.

Effective Date: August 8, 2019.

Agency Contact: Holly Trice, Attorney, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-2641, or email holly.trice@doli.virginia.gov.

DEPARTMENT OF MOTOR VEHICLES

Title of Document: 8 Hour Online Driver Manual Curriculum Vendor Application.

Public Comment Deadline: August 7, 2019.

Effective Date: August 8, 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.

BOARD OF PHARMACY

Titles of Documents:

Compliance with USP Standards for Compounding.

Categories of Facility Licensure.

Public Comment Deadline: August 7, 2019.

Effective Date: August 8, 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.

SAFETY AND HEALTH CODES BOARD

Title of Document: Virginia Occupational Safety and Health Field Operations Manual Version 3.3.

Public Comment Deadline: August 7, 2019.

Effective Date: August 8, 2019.

Agency Contact: Holly Trice, Attorney, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-2641, or email holly.trice@doli.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Whitehorn Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Gretna, Virginia.

The project is located east of Route 29 and southeast of the town of Gretna in north-central Pittsylvania County, Virginia (approximate coordinates are 36°55'43" N, 79°21'21" W). The project will be sited on roughly 700 acres of agricultural land across multiple parcels. The project will have a maximum rated capacity of 50 megawatts alternating current (AC). It will deliver power to an existing 69-kilovolt transmission line owned by Virginia Electric and Power Company (VEPCO). The project area will contain approximately 200,000 conventional photovoltaic solar panels (depending on the final panel selection) mounted on single-axis trackers in north-south rows that rotate east-to-west daily. The solar panels will produce direct current (DC) and deliver it to one of several inverters. The inverters will convert the power to AC, transformers will increase the voltage, and buried lines will deliver the electricity to a project substation in close proximity to the high-voltage transmission line.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

STATE BOARD OF HEALTH

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 Health is conducting a periodic review and small business impact review of **12VAC5-200, Regulations Governing Eligibility Standards and Charges for Medical Care Services to Individuals**. 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 July 8, 2019, and ends July 29, 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 Lisa Park, Health Care Reimbursement Manager, Virginia Department of Health, 109 Governor Street, 13th Floor, Richmond, VA 23219, telephone (804) 864-7018, FAX (804) 864-7022, or email lisa.park@vdh.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.

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 Health 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).

12VAC5-215, Rules and Regulations Governing Health Data Reporting

12VAC5-216, Methodology to Measure Efficiency and Productivity of Health Care Institutions

12VAC5-217, Regulations of the Patient Level Data System

12VAC5-218, Rules and Regulations Governing Outpatient Health Data Reporting

12VAC5-407, Procedures for the Submission of Health Maintenance Organization Quality of Care Performance Information

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 July 8, 2019, and ends August 8, 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 Mylam Ly, Policy Analyst, Virginia Department of Health, Richmond, VA 23219, telephone (804) 864-7128, or email mylam.ly@vdh.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.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Housing and Community Development conducted a small business impact review of **13VAC5-80, Virginia Standards for Individual and Regional Code Academies**, and determined that this regulation should be retained in its current form. The Department of Housing and Community Development is publishing its report of findings dated June 10, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

No public comments were received, and the regulation is currently only applicable to two localities. The regulation does not appear to be overly complex or duplicate or conflict with other federal or state law. The regulation underwent a regulatory review and update that became effective September 10, 2014. The regulation does not appear to have an impact on small businesses.

Contact Information: Kyle Flanders, Senior Policy Analyst, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, or email kyle.flanders@dhcd.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Housing and Community Development conducted a small business impact review of **13VAC5-200, Solar Energy Criteria for Tax Exemption**, and determined that this regulation should be retained in its current form. The Department of Housing and Community Development is publishing its report of findings dated June 7, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

No public comments were received and the regulation is applicable to limited localities that optionally adopt an ordinance for an exemption to certain local taxes. As noted, the regulation is required by the Code of Virginia. The regulation does not appear to be overly complex or duplicate or conflict with other federal or state law. The regulation was last reviewed in 2012. The regulation does not appear to have an impact on small businesses.

Contact Information: Kyle Flanders, Senior Policy Analyst, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, or email kyle.flanders@dhcd.virginia.gov.

DEPARTMENT OF LABOR AND INDUSTRY

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 Labor and Industry 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).

16VAC15-40, Virginia Hours of Work for Minors

16VAC15-50, Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards

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 July 8, 2019, and ends July 29, 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 Holly Trice, Regulatory Coordinator, Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-2641, FAX (804) 371-6524, or email holly.trice@doli.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.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Conservation and Recreation, on behalf of the Virginia Soil and Water Conservation Board, is conducting a periodic review and small business impact review of **4VAC50-70, Resource Management Plans**. The review of this regulation will be guided by the principles in Executive Order 14 (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 July 8, 2019, and ends September 6, 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 Watlington, Department of Conservation and Recreation, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-3319, FAX (804) 371-2630, or email christine.watlington@dcr.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.

DEPARTMENT OF TAXATION

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 Taxation is conducting a periodic review and small business impact review of **23VAC10-55, Virginia Corn Excise Tax**. 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 July 8, 2019, and ends July 29, 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 Joe Mayer, Lead Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

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

VIRGINIA WASTE MANAGEMENT BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-130, Solid Waste Planning and Recycling Regulations**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated May 8, 2019, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. The regulation contains requirements for the content of solid waste management plans and details the options localities have when developing solid waste management plans. Localities may choose to develop their own plans or may join with other localities to form solid waste planning units. These plans promote source reduction, reuse, and recycling of materials, thereby reducing the amount of solid waste that needs to be disposed of in landfills.

No comments were received during the public comment period.

The regulation provides details concerning the content of solid waste management plans, required recycling rates, and the formation of solid waste planning units. The regulation is written in nontechnical language.

This regulation is a state-only regulation and there is no equivalent federal regulation. This regulation does overlap to an extent with the Solid Waste Management Regulation,

9VAC20-81. Both regulations address solid waste and the need to properly manage solid waste at permitted facilities. Some facilities that manage solid waste receive permits from the department that are issued through the Solid Waste Management Regulation, 9VAC20-81.

The regulation was amended in March 2019 to update terminology to be consistent with Virginia Hazardous Waste Management Regulations. The regulation was amended in February 2019 to clarify requirements and reorganize sections of the regulation to make the regulation easier to use.

The regulation requires localities to develop solid waste management plans. Small businesses are not required to develop solid waste management plans. Localities may collect information from businesses and industries in their localities in developing and implementing their plans. This regulation has minimal impact on small businesses.

Contact Information: Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for Dominion Pallet Inc.

An enforcement action has been proposed for Dominion Pallet Inc. for violations of the State Water Control Law and regulations at the Dominion Pallet facility located in Mineral, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Dominion Pallet facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Benjamin Holland will accept comments by email at benjamin.holland@deq.virginia.gov or by postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from July 9, 2019, through August 8, 2019.

Proposed Consent Order for E&A Call Inc.

An enforcement action has been proposed for E&A Call Inc. for violations of the State Water Control Law and regulations at the Manchester subdivision located in Bumpass, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Manchester subdivision. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Benjamin Holland will accept comments by email at benjamin.holland@deq.virginia.gov or by postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from July 9, 2019, through August 8, 2019.

Proposed Consent Order for Pilot Travel Centers LLC

An enforcement action has been proposed for Pilot Travel Centers LLC for violations at the Pilot Travel Center 4649 facility in Raphine, Virginia. The State Water Control Board proposes to issue a consent order with penalty to Pilot Travel Centers LLC 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. Tiffany Severs will accept comments by email at tiffany.severs@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from July 8, 2019, to August 7, 2019.

Proposed Consent Order for Rhumb Line Navigation Inc.

An enforcement action has been proposed for Rhumb Line Navigation Inc. for alleged violations that occurred at the Custom Yacht Service in Irvington, Virginia. The State Water Control Board proposes to issue a consent special order to Rhumb Line Navigation 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. Cynthia Akers will accept comments by email at cynthia.akers@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from July 8, 2019, to August 7, 2019.

Public Meeting and Opportunity for Public Comment on Total Maximum Daily Load Implementation Plan for the McClure River Watershed, Dickenson County

Public meeting: The first public meeting to initiate the development of a total maximum daily load (TMDL) implementation plan (IP) for the McClure River Watershed will be held on Tuesday, July 16, 2019, from 6 p.m. until 8 p.m. in the McClure River Kiwanis building, located at the intersection of State Route 63 (Dante Mountain Road) and State Route 773 (Herndon Road) in the McClure Community, Dickenson County, Virginia.

Purpose of notice: The Department of Environmental Quality (DEQ) is seeking input from watershed stakeholders to address the best way to restore water quality in the McClure River Watershed. An IP will be developed to explain the pollutant reductions needed to meet the targets contained in the 2018 TMDL report prepared for the watershed. The IP will recommend 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 persons to submit comments on the development of the IP. Written comments will be accepted from July 17, 2019, to August 15, 2019. Directions for how to submit a comment are provided here.

Description of study: There are six different impaired stream segments in the McClure River Watershed, including three segments of the McClure River mainstem, Big Spraddle Branch, Buffalo Creek, and Roaring Fork. All segments are listed as impaired on Virginia's § 303(d) TMDL Priority List and Report due to violations of Virginia's recreational use water quality standard from excess levels of E. coli bacteria.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7 C of the Code of Virginia requires expeditious implementation of TMDLs when appropriate. The IP will provide measurable goals and the date of expected achievement of water quality objectives. The IP will also include the corrective actions needed and their associated costs, benefits, and environmental impacts. DEQ completed the bacteria TMDL for the McClure River in 2018. To obtain a copy of the TMDL report, use the contact information listed.

How to comment and participate: This meeting is open to the public and all interested parties are welcome. A public comment period on the development of the TMDL IP will begin on July 17, 2019, and end August 15, 2019. All comments must be written and submitted via postal mail or email by 11:59 p.m. on August 15, 2019. Comments must include the name, address, and telephone number of the person submitting the comments. Please submit comments to Stephanie Kreps, Department of Environmental Quality, Southwest Regional Office, 355A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4803, or email stephanie.kreps@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.

ERRATA

STATE CORPORATION COMMISSION

Bureau of Insurance

Title of General Notice: **Administrative Letter 2019-01.**

Publication: 35:19 VA.R. 2303-2304, May 13, 2019

Correction to Administrative Letter:

Page 2303, column 2, on the line before the first line of text of the administrative letter add "April 16, 2019"; on the next line, add "Administrative Letter 2019-01"

VA.R. Doc. No. C19-310; Filed April 16, 2019, 8:41 a.m.