



# Virginia Register of Regulations

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## TABLE OF CONTENTS

<b>Register Information Page</b> .....	3311
<b>Publication Schedule and Deadlines</b> .....	3312
<b>Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed</b> ..	3313
<b>Petitions for Rulemaking</b> .....	3328
<b>Notices of Intended Regulatory Action</b> .....	3329
<b>Regulations</b> .....	3330
2VAC20-10. Public Participation Guidelines (Fast-Track) .....	3330
4VAC15-50. Game: Bear (Final) .....	3331
4VAC15-90. Game: Deer (Final) .....	3332
4VAC15-260. Game: Waterfowl and Waterfowl Blinds (Final) .....	3333
4VAC15-270. Game: Firearms (Final) .....	3333
4VAC25-130. Coal Surface Mining Reclamation Regulations (Proposed) .....	3334
10VAC5-200. Payday Lending (Proposed) .....	3346
12VAC5-90. Regulations for Disease Reporting and Control (Proposed) .....	3347
12VAC35-200. Regulations for Respite and Emergency Care Admission to Mental Retardation Facilities (Proposed) .....	3352
18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (Final) .....	3357
18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (Proposed) .....	3362
18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (Final) .....	3367
18VAC85-40. Regulations Governing the Practice of Respiratory Care Practitioners (Final) .....	3367
18VAC85-50. Regulations Governing the Practice of Physician Assistants (Final) .....	3367
18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (Final) .....	3367
18VAC85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited (Final) .....	3367
18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists (Final) .....	3367
18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (Final) .....	3367
18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (Final) .....	3369
18VAC112-20. Regulations Governing the Practice of Physical Therapy (Proposed) .....	3370
18VAC112-20. Regulations Governing the Practice of Physical Therapy (Proposed) .....	3381
18VAC115-20. Regulations Governing the Practice of Professional Counseling (Final) .....	3386
18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (Final) .....	3386
18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (Final) .....	3386
18VAC125-30. Regulations Governing the Certification of Sex Offender Treatment Providers (Proposed) .....	3395
18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (Proposed) .....	3398
22VAC40-211. Resource, Foster and Adoptive Family Home Approval Standards (Proposed) .....	3411
22VAC40-690. Virginia Child Care Provider Scholarship Program (Final) .....	3420
<b>General Notices/Errata</b> .....	3423

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**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, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

## **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.

Proposed 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**

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. 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 addressing specifically defined situations and may not exceed 12 months in duration. 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. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

*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: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

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## August 2008 through April 2009

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
<b>INDEX 3 Volume 24</b>		<b>July 2008</b>
24:24	July 16, 2008	August 4, 2008
24:25	July 30, 2008	August 18, 2008
24:26	August 13, 2008	September 1, 2008
<b>FINAL INDEX Volume 24</b>		<b>October 2008</b>
25:1	August 27, 2008	September 15, 2008
25:2	September 10, 2008	September 29, 2008
25:3	September 24, 2008	October 13, 2008
25:4	October 8, 2008	October 27, 2008
25:5	October 22, 2008	November 10, 2008
25:6	November 5, 2008	November 24, 2008
25:7	November 18, 2008 ( <b>Tuesday</b> )	December 8, 2008
<b>INDEX 1 Volume 25</b>		<b>October 2008</b>
25:8	December 3, 2008	December 22, 2008
25:9	December 16, 2008 ( <b>Tuesday</b> )	January 5, 2009
25:10	December 30, 2008 ( <b>Tuesday</b> )	January 19, 2009
25:11	January 14, 2009	February 2, 2009
25:12	January 28, 2009	February 16, 2009
25:13	February 11, 2009	March 2, 2009
25:14	February 25, 2009	March 16, 2009
<b>INDEX 2 Volume 25</b>		<b>April 2009</b>
25:15	March 11, 2009	March 30, 2009
25:16	March 25, 2009	April 13, 2009
25:17	April 8, 2009	April 27, 2009

\*Filing deadlines are Wednesdays unless otherwise specified.

# CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 7, dated December 10, 2007, and fast-track regulations published through Virginia Register Volume 24 Issue 10, dated January 21, 2008). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 2. Agriculture</b>			
2 VAC 5-30-10	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-30-20	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-50-20	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-70	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-100	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-110	Amended	24:17 VA.R. 2321	6/12/08
2 VAC 5-90-30	Amended	24:17 VA.R. 2322	6/12/08
2 VAC 5-150-10	Amended	24:17 VA.R. 2323	6/12/08
2 VAC 5-180-20	Amended	24:17 VA.R. 2326	6/12/08
2 VAC 5-180-30	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-50	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-60	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-80	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-120	Amended	24:17 VA.R. 2328	6/12/08
2 VAC 5-210-30	Amended	24:9 VA.R. 1096	12/11/07
2 VAC 5-210-41	Amended	24:9 VA.R. 1097	12/11/07
2 VAC 5-390-180	Amended	24:15 VA.R. 2023	3/11/08
2 VAC 5-400-5	Added	24:17 VA.R. 2330	6/12/08
2 VAC 5-420-30	Amended	24:20 VA.R. 2838	5/21/08
2 VAC 5-420-80	Amended	24:20 VA.R. 2840	5/21/08
2 VAC 5-501-80	Amended	24:17 VA.R. 2332	6/12/08
2 VAC 5-501-100	Amended	24:17 VA.R. 2336	6/12/08
2 VAC 5-510-10	Amended	24:17 VA.R. 2340	6/12/08
2 VAC 5-510-50	Amended	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-60	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-70	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-80	Repealed	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-90	Amended	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-100	Repealed	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-110	Amended	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-120	Repealed	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-130	Amended	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-140	Repealed	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-150	Amended	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-160	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-170	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-180	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-190	Amended	24:17 VA.R. 2348	6/12/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 5-510-200	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-210	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-220	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-230	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-240	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-250	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-260	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-270	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-290	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-300	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-310	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-320	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-330	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-340	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-350	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-360	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-390	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-400	Repealed	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-410	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-420	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-500	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-510	Amended	24:17 VA.R. 2353	6/12/08
2 VAC 5-531-50	Amended	24:16 VA.R. 2235	5/29/08
2 VAC 5-531-140	Amended	24:16 VA.R. 2241	5/29/08
2 VAC 15-20-81	Amended	24:16 VA.R. 2242	4/14/08
2 VAC 20-20-70	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-130	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-210	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-40-50	Amended	24:17 VA.R. 2357	6/12/08
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-50-140 emer	Amended	24:11 VA.R. 1344	1/9/08-1/8/09
3 VAC 5-50-145 emer	Added	24:11 VA.R. 1345	1/9/08-1/8/09
3 VAC 5-70-220	Amended	24:14 VA.R. 1891	5/1/08
3 VAC 5-70-225 emer	Added	24:10 VA.R. 1257	1/2/08-1/1/09
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 5-50-10 through 4VAC5-50-170	Repealed	24:17 VA.R. 2357	5/28/08
4 VAC 15-20-50	Amended	24:10 VA.R. 1258	1/1/08
4 VAC 15-20-130	Amended	24:10 VA.R. 1259	1/1/08
4 VAC 15-20-200	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-20-210	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-30-5	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-30-40	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-40-30	Amended	24:23 VA.R. 3108	7/1/08
4 VAC 15-40-70	Amended	24:23 VA.R. 3108	7/1/08
4 VAC 15-40-190	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-40-210	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-40-220	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-20	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-25	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-81	Amended	24:23 VA.R. 3109	7/1/08
4 VAC 15-50-91	Amended	24:23 VA.R. 3110	7/1/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-70-50	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-70-70	Added	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-22	Amended	24:23 VA.R. 3111	7/1/08
4 VAC 15-90-70	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-80	Amended	24:23 VA.R. 3112	7/1/08
4 VAC 15-90-90	Amended	24:23 VA.R. 3113	7/1/08
4 VAC 15-90-91	Amended	24:23 VA.R. 3114	7/1/08
4 VAC 15-110-10	Amended	24:23 VA.R. 3117	7/1/08
4 VAC 15-110-75	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-11	Added	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-20	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-31	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-40	Amended	24:23 VA.R. 3118	7/1/08
4 VAC 15-240-50	Amended	24:23 VA.R. 3119	7/1/08
4 VAC 15-240-51	Added	24:23 VA.R. 3119	7/1/08
4 VAC 15-320-25	Amended	24:10 VA.R. 1265	1/1/08
4 VAC 15-330-30	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-100	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-120	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-160	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-171	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-330-200	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-10	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-30	Amended	24:10 VA.R. 1274	1/1/08
4 VAC 15-350-20	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-30	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-60	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-70	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-360-10	Amended	24:10 VA.R. 1276	1/1/08
4 VAC 15-410-10 through 4 VAC 15-410-160	Added	24:23 VA.R. 3119-3125	7/1/08
4 VAC 20-40-10 through 4 VAC 20-40-40	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-10	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-20	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-30	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-140-10	Amended	24:21 VA.R. 2917	3/17/09
4 VAC 20-140-20	Amended	24:21 VA.R. 2917	3/17/09
4 VAC 20-140-25	Added	24:21 VA.R. 2917	3/17/09
4 VAC 20-150-30	Amended	24:10 VA.R. 1277	1/1/08
4 VAC 20-252-55	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-120	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-150	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-160	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-230	Amended	24:10 VA.R. 1281	1/1/08
4 VAC 20-270-10 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-10	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-30	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-40	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-50	Amended	24:21 VA.R. 2918	6/1/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-270-55	Amended	24:15 VA.R. 2023	3/1/08
4 VAC 20-270-55	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-56	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-58	Added	24:19 VA.R. 2751	4/30/08
4 VAC 20-320-50	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-450-30	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-530-20	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-530-31	Amended	24:13 VA.R. 1735	2/5/08
4 VAC 20-530-32	Repealed	24:12 VA.R. 1457	2/1/08
4 VAC 20-610-20	Amended	24:8 VA.R. 959	12/1/07
4 VAC 20-610-25	Added	24:8 VA.R. 959	12/1/07
4 VAC 20-610-30	Amended	24:8 VA.R. 960	12/1/07
4 VAC 20-610-30	Amended	24:15 VA.R. 2024	3/1/08
4 VAC 20-610-50	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-610-60	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-620-30	Amended	24:10 VA.R. 1281	12/27/07
4 VAC 20-620-40 emer	Amended	24:8 VA.R. 962	11/28/07-12/27/07
4 VAC 20-620-40	Amended	24:10 VA.R. 1282	12/27/07
4 VAC 20-620-50	Amended	24:15 VA.R. 2025	3/1/08
4 VAC 20-620-70	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-670-20	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-25	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-30	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-40	Amended	24:19 VA.R. 2753	4/30/08
4 VAC 20-700-10 emer	Amended	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-15 emer	Added	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-15	Added	24:21 VA.R. 2918	6/1/08
4 VAC 20-700-20	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-700-20 emer	Amended	24:19 VA.R. 2754	5/1/08-5/31/08
4 VAC 20-700-20	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-720-40	Amended	24:12 VA.R. 1457	2/1/08
4 VAC 20-720-50	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-60	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-80	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-750-10	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-10	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-30	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-30	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-40	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-50	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-751-15	Added	24:15 VA.R. 2027	3/1/08
4 VAC 20-751-20	Amended	24:15 VA.R. 2027	3/1/08
4 VAC 20-752-20	Amended	24:19 VA.R. 2754	4/30/08
4 VAC 20-752-30	Amended	24:16 VA.R. 2246	4/1/08
4 VAC 20-752-30	Amended	24:19 VA.R. 2755	4/30/08
4 VAC 20-880-10 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-10	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-880-20 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-20	Amended	24:19 VA.R. 2756	4/30/08
4 VAC 20-880-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-880-30	Amended	24:19 VA.R. 2757	4/30/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-880-30	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-950-47	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48.1	Amended	24:15 VA.R. 2029	3/1/08
4 VAC 20-960-45	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-960-47	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-20	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-35	Added	24:12 VA.R. 1459	2/1/08
4 VAC 20-1090-10 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:8 VA.R. 965	12/1/07
4 VAC 20-1090-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:19 VA.R. 2760	4/30/08
4 VAC 20-1090-30	Amended	24:21 VA.R. 2920	6/1/08
4 VAC 20-1130-10 through 4 VAC 20-1130-70	Added	24:8 VA.R. 968-970	12/1/07
4 VAC 20-1140-10	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-20	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-30	Added	24:19 VA.R. 2763	4/30/08
4 VAC 25-130 (Forms)	Amended	24:11 VA.R. 1424	--
4 VAC 25-150-90	Amended	24:17 VA.R. 2359	6/12/08
4 VAC 50-60-10	Amended	24:20 VA.R. 2842	7/9/08
4 VAC 50-60-1200	Amended	24:20 VA.R. 2852	7/9/08
4 VAC 50-60-1210	Amended	24:20 VA.R. 2853	7/9/08
4 VAC 50-60-1220	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1230	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1240	Amended	24:20 VA.R. 2856	7/9/08
<b>Title 5. Corporations</b>			
5 VAC 5-20-20	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-140	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-150	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-170	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-240	Amended	24:11 VA.R. 1349	2/15/08
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 15-61-10 through 6 VAC 15-61-300	Repealed	24:8 VA.R. 970	1/24/08
6 VAC 15-62-10 through 6 VAC 15-62-120	Added	24:8 VA.R. 970-979	1/24/08
6 VAC 15-62-110	Amended	24:13 VA.R. 1736	3/3/08
6 VAC 15-62 (Forms)	Amended	24:12 VA.R. 1523	--
6 VAC 20-80-10 through 6 VAC 20-80-90	Amended	24:23 VA.R. 3127-3132	9/1/08
6 VAC 20-80-100	Repealed	24:23 VA.R. 3132	9/1/08
6 VAC 20-80-110	Repealed	24:23 VA.R. 3132	9/1/08
6 VAC 20-171-10 emer	Amended	24:23 VA.R. 3134	7/1/08 - 6/30/09
6 VAC 20-171-50 emer	Amended	24:23 VA.R. 3137	7/1/08 - 6/30/09
6 VAC 20-171-120 emer	Amended	24:23 VA.R. 3138	7/1/08 - 6/30/09
6 VAC 20-171-230 emer	Amended	24:23 VA.R. 3139	7/1/08 - 6/30/09
6 VAC 20-171-320 emer	Amended	24:23 VA.R. 3141	7/1/08 - 6/30/09
6 VAC 20-171-350 emer	Amended	24:23 VA.R. 3142	7/1/08 - 6/30/09
6 VAC 20-171-360 emer	Amended	24:23 VA.R. 3145	7/1/08 - 6/30/09
6 VAC 20-250-10 through 6 VAC 20-250-380	Added	24:23 VA.R. 3146-3161	8/20/08
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08
<b>Title 8. Education</b>			
8 VAC 20-650-30	Amended	24:21 VA.R. 2936	9/15/08



## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 9. Environment</b>			
9 VAC 10-20-120	Amended	24:22 VA.R. 3040	8/6/08
9 VAC 20-60-18	Amended	24:9 VA.R. 1106	2/6/08
9 VAC 25-32 (Forms)	Amended	24:13 VA.R. 1738	--
9 VAC 25-120-10	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-20	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-50	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-60	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-70	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-80	Amended	24:9 VA.R. 1109	2/6/08
9 VAC 25-120-80	Amended	24:18 VA.R. 2502	6/11/08
9 VAC 25-193-40	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-193-70	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-196-20	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-40	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-60	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-70	Amended	24:9 VA.R. 1125	2/6/08
9 VAC 25-196-70	Amended	24:18 VA.R. 2532	6/11/08
9 VAC 25-210-10	Amended	24:9 VA.R. 1132	2/6/08
9 VAC 25-210-60	Amended	24:9 VA.R. 1136	2/6/08
9 VAC 25-210-116	Amended	24:9 VA.R. 1140	2/6/08
9 VAC 25-210-130	Amended	24:9 VA.R. 1142	2/6/08
9 VAC 25-260-30	Amended	24:13 VA.R. 1741	*
9 VAC 25-660-10	Amended	24:9 VA.R. 1144	2/6/08
9 VAC 25-660-60	Amended	24:9 VA.R. 1145	2/6/08
9 VAC 25-660-70	Amended	24:9 VA.R. 1147	2/6/08
9 VAC 25-660-80	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-660-100	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-670-10	Amended	24:9 VA.R. 1156	2/6/08
9 VAC 25-670-70	Amended	24:9 VA.R. 1157	2/6/08
9 VAC 25-670-80	Amended	24:9 VA.R. 1158	2/6/08
9 VAC 25-670-100	Amended	24:9 VA.R. 1159	2/6/08
9 VAC 25-680-10	Amended	24:9 VA.R. 1170	2/6/08
9 VAC 25-680-60	Amended	24:9 VA.R. 1172	2/6/08
9 VAC 25-680-70	Amended	24:9 VA.R. 1174	2/6/08
9 VAC 25-680-80	Amended	24:9 VA.R. 1175	2/6/08
9 VAC 25-680-100	Amended	24:9 VA.R. 1176	2/6/08
9 VAC 25-690-10	Amended	24:9 VA.R. 1188	2/6/08
9 VAC 25-690-70	Amended	24:9 VA.R. 1190	2/6/08
9 VAC 25-690-80	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-690-100	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-720-50	Amended	24:18 VA.R. 2540	6/11/08
9 VAC 25-720-120	Amended	24:21 VA.R. 2940	8/7/08
9 VAC 25-720-130	Amended	24:18 VA.R. 2548	6/11/08
9 VAC 25-820-10	Amended	24:21 VA.R. 2942	8/7/08
9 VAC 25-820-20	Amended	24:21 VA.R. 2944	8/7/08
9 VAC 25-820-70	Amended	24:21 VA.R. 2944	8/7/08
<b>Title 10. Finance and Financial Institutions</b>			
10 VAC 5-20-30	Amended	24:22 VA.R. 3043	6/23/08

\* Effective upon filing notice of U.S. EPA approval with Registrar of Regulations

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
10 VAC 5-40-5	Added	24:22 VA.R. 3045	7/1/08
10 VAC 5-40-60	Added	24:22 VA.R. 3045	7/1/08
<b>Title 11. Gaming</b>			
11 VAC 10-130-60	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-10	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-20	Repealed	24:16 VA.R. 2248	4/14/08
11 VAC 10-180-25	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-35	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-60	Amended	24:16 VA.R. 2251	4/14/08
11 VAC 10-180-70	Amended	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-75	Added	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-80	Amended	24:16 VA.R. 2257	4/14/08
11 VAC 10-180-85	Amended	24:16 VA.R. 2258	4/14/08
11 VAC 10-180-110	Amended	24:16 VA.R. 2259	4/14/08
<b>Title 12. Health</b>			
12 VAC 5-90-370	Added	24:19 VA.R. 2777	7/1/08
12 VAC 5-195-10 through 12 VAC 5-195-670	Added	24:19 VA.R. 2778-2802	5/26/08
12 VAC 5-220-10	Amended	24:11 VA.R. 1350	3/5/08
12 VAC 5-220-110	Amended	24:11 VA.R. 1353	3/5/08
12 VAC 5-220-130	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-200	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-371-150	Amended	24:11 VA.R. 1357	3/5/08
12 VAC 5-381-10 through 12VAC5-381-40	Amended	24:11 VA.R. 1358-1361	3/5/08
12 VAC 5-381-60 through 12VAC5-381-100	Amended	24:11 VA.R. 1361-1362	3/5/08
12 VAC 5-381-120	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-140	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-150	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-240	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-381-280	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-391-10	Amended	24:11 VA.R. 1364	3/5/08
12 VAC 5-391-30 through 12 VAC 5-391-100	Amended	24:11 VA.R. 1366-1368	3/5/08
12 VAC 5-391-120	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-130	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-150	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-160	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-250	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-391-280	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-410-230	Amended	24:11 VA.R. 1371	3/5/08
12 VAC 5-481-10	Amended	24:18 VA.R. 2566	6/12/08
12 VAC 5-481-20	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-30	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-90	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-100	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-110	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-130	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-150	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-200	Repealed	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-230 through 12 VAC 5-481-270	Amended	24:18 VA.R. 2594-2595	6/12/08
12 VAC 5-481-340	Amended	24:18 VA.R. 2595	6/12/08
12 VAC 5-481-370 through 12 VAC 5-481-450	Amended	24:18 VA.R. 2597-2607	6/12/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-460	Repealed	24:18 VA.R. 2607	6/12/08
12 VAC 5-481-470	Amended	24:18 VA.R. 2608	6/12/08
12 VAC 5-481-480	Amended	24:18 VA.R. 2610	6/12/08
12 VAC 5-481-500	Amended	24:18 VA.R. 2619	6/12/08
12 VAC 5-481-510	Amended	24:18 VA.R. 2620	6/12/08
12 VAC 5-481-530 through 12 VAC 5-481-590	Amended	24:18 VA.R. 2622-2626	6/12/08
12 VAC 5-481-571	Added	24:18 VA.R. 2624	6/12/08
12 VAC 5-481-630 through 12 VAC 5-481-760	Amended	24:18 VA.R. 2626-2629	6/12/08
12 VAC 5-481-780	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-790	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-800	Repealed	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-810 through 12 VAC 5-481-910	Amended	24:18 VA.R. 2630-2631	6/12/08
12 VAC 5-481-930 through 12 VAC 5-481-1050	Amended	24:18 VA.R. 2632-2633	6/12/08
12 VAC 5-481-971	Added	24:18 VA.R. 2632	6/12/08
12 VAC 5-481-1070	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1090	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1100	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1110	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1130	Amended	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1151	Added	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1160	Repealed	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1161	Added	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1190	Amended	24:18 VA.R. 2637	6/12/08
12 VAC 5-481-1200	Amended	24:18 VA.R. 2638	6/12/08
12 VAC 5-481-1220 through 12 VAC 5-481-1250	Amended	24:18 VA.R. 2639-2640	6/12/08
12 VAC 5-481-1270	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1300	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1310	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1320	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1350	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1380	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1420	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1440	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1490	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1520	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1540	Repealed	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1550	Repealed	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1560	Amended	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1570	Amended	24:18 VA.R. 2647	6/12/08
12 VAC 5-481-1670 through 12 VAC 5-481-2040	Amended	24:18 VA.R. 2647-2650	6/12/08
12 VAC 5-481-2001	Added	24:18 VA.R. 2649	6/12/08
12 VAC 5-481-2050	Repealed	24:18 VA.R. 2650	6/12/08
12 VAC 5-481-2060	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2070	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2080	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2100	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2230	Amended	24:18 VA.R. 2652	6/12/08
12 VAC 5-481-2240	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2260	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2270	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2280	Amended	24:18 VA.R. 2654	6/12/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-2330	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2420	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2430	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2470	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2490	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2510	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2530	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2540	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2550	Amended	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2571	Added	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2572	Added	24:18 VA.R. 2659	6/12/08
12 VAC 5-481-2573	Added	24:18 VA.R. 2660	6/12/08
12 VAC 5-481-2660 through 12 VAC 5-481-2950	Amended	24:18 VA.R. 2660-2661	6/12/08
12 VAC 5-481-2970	Amended	24:18 VA.R. 2661	6/12/08
12 VAC 5-481-2980	Amended	24:18 VA.R. 2662	6/12/08
12 VAC 5-481-3000 through 12 VAC 5-481-3040	Amended	24:18 VA.R. 2663-2665	6/12/08
12 VAC 5-481-3070 through 12 VAC 5-481-3140	Amended	24:18 VA.R. 2667-2670	6/12/08
12 VAC 5-481-3050	Repealed	24:18 VA.R. 2665	6/12/08
12 VAC 5-481-3051	Added	24:18 VA.R. 2666	6/12/08
12 VAC 5-481-3091	Added	24:18 VA.R. 2668	6/12/08
12 VAC 5-481-3151	Added	24:18 VA.R. 2670	6/12/08
12 VAC 5-481-3160	Amended	24:18 VA.R. 2671	6/12/08
12 VAC 5-481-3200 through 12 VAC 5-481-3270	Amended	24:18 VA.R. 2671-2675	6/12/08
12 VAC 5-481-3241	Added	24:18 VA.R. 2673	6/12/08
12 VAC 5-481-3261	Added	24:18 VA.R. 2674	6/12/08
12 VAC 5-481-3290	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3300	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3340	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3350	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3400	Amended	24:18 VA.R. 2676	6/12/08
12 VAC 5-481-3430	Amended	24:18 VA.R. 2677	6/12/08
12 VAC 5-481-3440	Amended	24:18 VA.R. 2683	6/12/08
12 VAC 5-481-3480	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3490	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3510	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3520	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3530	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3560	Amended	24:18 VA.R. 2686	6/12/08
12 VAC 5-481-3580	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3600	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3610	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3650	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3670 through 12 VAC 5-481-3780	Repealed	24:18 VA.R. 2689-2715	6/12/08
12 VAC 30-50-130 emer	Amended	24:23 VA.R. 3165	7/2/08 - 7/1/09
12 VAC 30-70-221	Amended	24:21 VA.R. 2959	7/23/08
12 VAC 30-80-30	Erratum	24:17 VA.R. 2473	--
12 VAC 30-80-30	Amended	24:21 VA.R. 2962	7/23/08
12 VAC 30-80-75	Added	24:21 VA.R. 2965	7/23/08
12 VAC 30-120-70 emer	Amended	24:23 VA.R. 3168	7/1/08 - 6/30/09
12 VAC 30-120-90 emer	Amended	24:23 VA.R. 3169	7/1/08 - 6/30/09

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-120-140 emer	Amended	24:23 VA.R. 3171	7/1/08 - 6/30/09
12 VAC 30-120-211 emer	Amended	24:23 VA.R. 3174	7/1/08 - 6/30/09
12 VAC 30-120-213 emer	Amended	24:23 VA.R. 3177	7/1/08 - 6/30/09
12 VAC 30-120-225 emer	Amended	24:23 VA.R. 3178	7/1/08 - 6/30/09
12 VAC 30-120-229 emer	Amended	24:23 VA.R. 3181	7/1/08 - 6/30/09
12 VAC 30-120-237 emer	Amended	24:23 VA.R. 3182	7/1/08 - 6/30/09
12 VAC 30-120-247 emer	Amended	24:23 VA.R. 3184	7/1/08 - 6/30/09
12 VAC 30-120-700 emer	Amended	24:23 VA.R. 3185	7/1/08 - 6/30/09
12 VAC 30-120-710 emer	Amended	24:23 VA.R. 3189	7/1/08 - 6/30/09
12 VAC 30-120-754 emer	Amended	24:23 VA.R. 3190	7/1/08 - 6/30/09
12 VAC 30-120-758 emer	Amended	24:23 VA.R. 3191	7/1/08 - 6/30/09
12 VAC 30-120-762 emer	Amended	24:23 VA.R. 3192	7/1/08 - 6/30/09
12 VAC 30-120-770 emer	Amended	24:23 VA.R. 3193	7/1/08 - 6/30/09
12 VAC 30-120-900 emer	Amended	24:23 VA.R. 3195	7/1/08 - 6/30/09
12 VAC 30-120-910 emer	Amended	24:23 VA.R. 3197	7/1/08 - 6/30/09
12 VAC 30-120-920 emer	Amended	24:23 VA.R. 3198	7/1/08 - 6/30/09
12 VAC 30-120-970 emer	Amended	24:23 VA.R. 3200	7/1/08 - 6/30/09
12 VAC 30-120-1500 emer	Amended	24:23 VA.R. 3202	7/1/08 - 6/30/09
12 VAC 30-120-1550 emer	Amended	24:23 VA.R. 3204	7/1/08 - 6/30/09
12 VAC 30-120-2000 emer	Added	24:23 VA.R. 3206	7/1/08 - 6/30/09
12 VAC 30-120-2010 emer	Added	24:23 VA.R. 3207	7/1/08 - 6/30/09
12 VAC 35-105-115	Added	24:11 VA.R. 1372	3/5/08
<b>Title 13. Housing</b>			
13 VAC 5-21-10	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-20	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-31	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-41	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-45	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-51	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-61	Amended	24:14 VA.R. 1896	5/1/08
13 VAC 5-31-20 through 13 VAC 5-31-50	Amended	24:14 VA.R. 1897-1898	5/1/08
13 VAC 5-31-70 through 13 VAC 5-31-170	Repealed	24:14 VA.R. 1898-1903	5/1/08
13 VAC 5-31-75	Added	24:14 VA.R. 1898	5/1/08
13 VAC 5-31-85	Added	24:14 VA.R. 1900	5/1/08
13 VAC 5-31-200	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-210	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-215 through 13 VAC 5-31-270	Added	24:14 VA.R. 1904-1905	5/1/08
13 VAC 5-51-21 through 13 VAC 5-51-51	Amended	24:14 VA.R. 1907-1910	5/1/08
13 VAC 5-51-81	Amended	24:14 VA.R. 1910	5/1/08
13 VAC 5-51-85	Amended	24:14 VA.R. 1921	5/1/08
13 VAC 5-51-91	Amended	24:14 VA.R. 1924	5/1/08
13 VAC 5-51-130 through 13 VAC 5-51-135	Amended	24:14 VA.R. 1925-1928	5/1/08
13 VAC 5-51-143	Added	24:14 VA.R. 1928	5/1/08
13 VAC 5-51-145	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-150	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-152	Repealed	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-154	Amended	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-155	Amended	24:14 VA.R. 1939	5/1/08
13 VAC 5-63-10 through 13 VAC 5-63-50	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-70	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-80	Amended	24:14 VA.R. 1941	5/1/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-63-100 through 13 VAC 5-63-130	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-150	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-160	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-190 through 13 VAC 5-63-260	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-225	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-265	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-267	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-270	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-280	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-300 through 13 VAC 5-63-360	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-335	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-400	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-430	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-432	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-434 through 13 VAC 5-63-450	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-470 through 13 VAC 5-63-500	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-520	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-525	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-550	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-91-20	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-100	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-110	Repealed	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-115	Added	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-120	Amended	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-160	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-91-270	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-95-10	Amended	24:14 VA.R. 1947	5/1/08
13 VAC 5-95-30	Amended	24:14 VA.R. 1948	5/1/08
13 VAC 5-112-340	Amended	24:8 VA.R. 979	1/23/08
13 VAC 10-180-10	Amended	24:11 VA.R. 1373	2/4/08
13 VAC 10-180-50	Amended	24:11 VA.R. 1374	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1376	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1387	2/4/08
13 VAC 10-180-100	Amended	24:11 VA.R. 1397	2/4/08
<b>Title 14. Insurance</b>			
14 VAC 5-30-30	Amended	24:15 VA.R. 2153	4/1/08
14 VAC 5-200-185	Amended	24:15 VA.R. 2155	4/1/08
14 VAC 5-211-50	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-90	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-100	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-215 (Forms)	Amended	24:17 VA.R. 2452	--
14 VAC 5-270-10 through 14 VAC 5-270-150	Amended	24:12 VA.R. 1460-1470	1/1/10
14 VAC 5-270-144	Added	24:12 VA.R. 1467	1/1/10
14 VAC 5-270-146	Added	24:12 VA.R. 1468	1/1/10
14 VAC 5-270-148	Added	24:12 VA.R. 1469	1/1/10
14 VAC 5-270-170	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-174	Added	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-180	Amended	24:12 VA.R. 1470	1/1/10
<b>Title 15. Judicial</b>			
15 VAC 5-80-50	Amended	24:23 VA.R. 3211	7/1/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 16. Labor and Employment</b>			
16 VAC 15-21-30	Amended	24:23 VA.R. 3213	8/21/08
16 VAC 15-30-190	Amended	24:23 VA.R. 3214	8/21/08
16 VAC 20-20-20	Amended	24:22 VA.R. 3065	8/7/08
16 VAC 20-20-40	Amended	24:22 VA.R. 3066	8/7/08
16 VAC 20-20-50	Amended	24:22 VA.R. 3068	8/7/08
16 VAC 20-20-60	Amended	24:22 VA.R. 3069	8/7/08
16 VAC 20-20-80	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 20-20-110	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 25-90-1910.6	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.68	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.94	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.103	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.107	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.110	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.111	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.132	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-90-1910.144	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.243	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.251	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.253	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.261	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-100-1915.152	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-120-1917.96	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-130-1918.106	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-175-1926.95	Added	24:16 VA.R. 2263	6/1/08
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 15-20-451	Amended	24:17 VA.R. 2455	8/1/08
18 VAC 30-20-80	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-170	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-171	Amended	24:10 VA.R. 1285	2/20/08
18 VAC 60-20-30	Amended	24:20 VA.R. 2874	7/24/08
18 VAC 60-20-81	Added	24:14 VA.R. 1949	4/16/08
18 VAC 60-20-108	Amended	24:14 VA.R. 1950	4/16/08
18 VAC 60-20-190	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 60-20-220	Amended	24:10 VA.R. 1287	3/10/08
18 VAC 60-20-220	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 65-20-151	Amended	24:22 VA.R. 3070	8/6/08
18 VAC 85-20-22	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-22	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 85-20-226	Added	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-400	Amended	24:20 VA.R. 2876	7/24/08
18 VAC 85-40-35	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-40-67	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-35	Amended	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-61	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-80-26	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-80-73	Added	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-25	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-25	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-40	Amended	24:20 VA.R. 2879	7/24/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 85-101-50	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-55	Added	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-60	Amended	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-70	Repealed	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-150	Amended	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-153	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-35	Amended	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-161	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-120-10	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-50	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-70	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-90	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-95	Added	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-150	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-130-30	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 90-20-10	Amended	24:13 VA.R. 1842	4/2/08
18 VAC 90-20-35	Amended	24:13 VA.R. 1843	4/2/08
18 VAC 90-20-40 through 18 VAC 90-20-60	Amended	24:13 VA.R. 1843-1845	4/2/08
18 VAC 90-20-65	Repealed	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-70	Amended	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-90	Amended	24:13 VA.R. 1845	4/2/08
18 VAC 90-20-95	Amended	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-96	Added	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-110 through 18 VAC 90-20-140	Amended	24:13 VA.R. 1846-1848	4/2/08
18 VAC 90-20-151	Added	24:13 VA.R. 1848	4/2/08
18 VAC 90-20-160	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-190	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-200	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-220	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-230	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-271	Amended	24:21 VA.R. 2969	7/23/08
18 VAC 90-20-275	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-280	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-300	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-370	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-390	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-410	Amended	24:13 VA.R. 1853	4/2/08
18 VAC 90-30-10	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-80	Erratum	24:18 VA.R. 2731-2732	--
18 VAC 90-30-120	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-121	Added	24:10 VA.R. 1289	2/20/08
18 VAC 90-60-110	Amended	24:23 VA.R. 3216	9/4/08
18 VAC 95-20-80	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-20-175	Amended	24:20 VA.R. 2887	7/24/08
18 VAC 95-20-220	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-20-230	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-30-40	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-30-95	Amended	24:23 VA.R. 3219	9/4/08
18 VAC 95-30-150	Amended	24:23 VA.R. 3220	9/4/08
18 VAC 95-30-180	Amended	24:23 VA.R. 3220	9/4/08



## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 105-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-20-321	Added	24:8 VA.R. 986	1/23/08
18 VAC 110-20-411 through 18 VAC 110-20-416	Repealed	24:8 VA.R. 986-987	1/23/08
18 VAC 110-20-530	Amended	24:16 VA.R. 2265	5/14/08
18 VAC 110-30-15	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-10	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-160	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-170	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-180	Added	24:10 VA.R. 1292	2/20/08
18 VAC 110-50-190	Added	24:10 VA.R. 1292	2/20/08
18 VAC 115-30-150	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-30-160	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 125-20-170	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 125-30-120	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 130-20-10	Amended	24:23 VA.R. 3225	9/1/08
18 VAC 130-20-70	Amended	24:23 VA.R. 3229	9/1/08
18 VAC 130-20-180	Amended	24:23 VA.R. 3229	9/1/08
18 VAC 130-20-200	Amended	24:23 VA.R. 3231	9/1/08
18 VAC 130-20-230	Amended	24:23 VA.R. 3231	9/1/08
18 VAC 135-20-10	Amended	24:11 VA.R. 1408	4/1/08
18 VAC 135-20-30	Amended	24:11 VA.R. 1409	4/1/08
18 VAC 135-20-60	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-100	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-101	Added	24:11 VA.R. 1412	4/1/08
18 VAC 135-20-105	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-160	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-170	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-180	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-190	Amended	24:11 VA.R. 1416	4/1/08
18 VAC 135-20-210	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-220	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-280	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-300	Amended	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-345	Added	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-360	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-370	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-390	Amended	24:11 VA.R. 1420	4/1/08
18 VAC 135-60-60	Amended	24:9 VA.R. 1230	3/1/08
18 VAC 140-20-50	Amended	24:23 VA.R. 3234	9/4/08
18 VAC 140-20-70	Amended	24:23 VA.R. 3235	9/4/08
18 VAC 140-20-105	Amended	24:20 VA.R. 2890	7/24/08
18 VAC 150-20-135	Amended	24:21 VA.R. 2969	7/23/08
<b>Title 19. Public Safety</b>			
19 VAC 30-20-115	Added	24:11 VA.R. 1421	3/6/08
19 VAC 30-70-6	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-7	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-9	Amended	24:8 VA.R. 989	3/1/08
19 VAC 30-70-10	Amended	24:8 VA.R. 991	3/1/08
19 VAC 30-70-40	Amended	24:8 VA.R. 994	3/1/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
19 VAC 30-70-50	Amended	24:8 VA.R. 995	3/1/08
19 VAC 30-70-60	Amended	24:8 VA.R. 997	3/1/08
19 VAC 30-70-80	Amended	24:8 VA.R. 998	3/1/08
19 VAC 30-70-90	Amended	24:8 VA.R. 1001	3/1/08
19 VAC 30-70-110 through 19 VAC 30-70-660	Amended	24:8 VA.R. 1001-1070	3/1/08
19 VAC 30-190-10 through 19 VAC 30-190-140	Added	24:11 VA.R. 1421-1423	3/6/08
<b>Title 21. Securities and Retail Franchising</b>			
21 VAC 5-20-280	Amended	24:21 VA.R. 2971	7/1/08
21 VAC 5-80-10	Amended	24:21 VA.R. 2976	7/1/08
21 VAC 5-80-200	Amended	24:21 VA.R. 2977	7/1/08
21 VAC 5-110-10	Amended	24:21 VA.R. 2983	7/1/08
21 VAC 5-110-20	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-30	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-40	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-50	Amended	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-55	Added	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-60	Amended	24:21 VA.R. 2986	7/1/08
21 VAC 5-110-65	Amended	24:21 VA.R. 2987	7/1/08
21 VAC 5-110-70	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-75	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-80	Amended	24:21 VA.R. 2989	7/1/08
21 VAC 5-110-90	Repealed	24:21 VA.R. 2992	7/1/08
21 VAC 5-110-95	Added	24:21 VA.R. 2992	7/1/08
<b>Title 22. Social Services</b>			
22 VAC 15-30-310	Amended	24:10 VA.R. 1295	3/6/08
22 VAC 30-10-10	Amended	24:22 VA.R. 3076	8/8/08
22 VAC 30-10-20	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-40	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-50	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 40-470-10	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-685-30	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-705-10 emer	Amended	24:14 VA.R. 1987	3/1/08-2/28/09
22 VAC 40-705-30 emer	Amended	24:14 VA.R. 1990	3/1/08-2/28/09
<b>Title 23. Taxation</b>			
23 VAC 10-10-10 through 23 VAC 10-10-80	Amended	24:12 VA.R. 1520-1521	4/19/08
23 VAC 10-10-80	Amended	24:12 VA.R. 1521	4/19/08
23 VAC 10-10-90	Repealed	24:12 VA.R. 1522	4/19/08
23 VAC 10-210-693	Amended	24:23 VA.R. 3240	10/6/08
23 VAC 10-500-10 through 23 VAC 10-500-820	Added	24:23 VA.R. 3253-3289	10/6/08
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 30-72-10 through 24 VAC 30-72-170	Added	24:17 VA.R. 2458-2466	7/1/08
24 VAC 30-72-30	Erratum	24:18 VA.R. 2732	--
24 VAC 30-155-10	Amended	24:23 VA.R. 3290	7/1/08
24 VAC 30-155-40	Amended	24:23 VA.R. 3291	7/1/08
24 VAC 30-155-50	Amended	24:23 VA.R. 3292	7/1/08
24 VAC 30-155-60	Amended	24:23 VA.R. 3294	7/1/08
24 VAC 30-155-70	Amended	24:23 VA.R. 3303	7/1/08
24 VAC 30-155-80	Amended	24:23 VA.R. 3303	7/1/08

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# PETITIONS FOR RULEMAKING

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Initial Agency Notice

Title of Regulation: 9VAC25-720. Water Quality Management Planning Regulation.

Statutory Authority: §62.1-44.15 of the Code of Virginia.

Name of Petitioner: New Kent County.

Nature of Petitioner's Request: Amend the Water Quality Management Planning Regulation (9VAC25-720), within section 9VAC25-720-120 C, to revise the total nitrogen and total phosphorus waste load allocations for New Kent County's Parham Landing wastewater facility (VPDES Permit No. 0088331). The county originally planned to expand the plant from 0.568 million gallons per day (MGD) to 3.0 MGD, and now intends to construct a smaller addition that will increase the design flow to 2.0 MGD. The funds saved by constructing the smaller plant will be used by the county to build a reuse system that will provide bulk irrigation water to aid in preventing groundwater shortages in the area. This change will result in lower discharged nutrient waste load allocations; the total nitrogen allocation would decrease by 18,273 lbs/yr (from 54,820 to 36,547 lbs/yr) and the total phosphorus allocation would decrease by 2,132 lbs/yr (from 6,396 to 4,264 lbs/yr). The county asks that since this request is expected to be noncontroversial, that the rulemaking be "fast-tracked."

Agency's Plan for Disposition of the Request: Public-notice receipt of the petition in the Virginia Register of Regulations on August 4, 2008, and provide for a 21-day public comment period. Upon close of the public comment period on August 25, 2008, review any comments received and then make a decision to either initiate a rulemaking or place the petition on the board's next meeting agenda for their consideration.

Comments may be submitted until August 25, 2008.

Agency Contact: John M. Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4116, or email [jmkennedy@deq.virginia.gov](mailto:jmkennedy@deq.virginia.gov).

VA.R. Doc. No. R08-27; Filed July 22, 2008, 1:51 p.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

#### Initial Agency Notice

Title of Regulation: 18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.

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

Name of Petitioner: Dr. Robert G. Sotack.

Nature of Petitioner's Request: To create a dental retirement license at no charge.

Agency's Plan for Disposition of the Request: The board is requesting public comment on the petition to amend rules to allow a dental retirement license at no charge. Comment will be considered and a decision made on the petitioner's request at the board meeting scheduled for September 12, 2008.

Comments may be submitted until September 3, 2008.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

VA.R. Doc. No. R08-26; Filed July 9, 2008, 8:32 a.m.



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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider promulgating the regulation entitled: **8VAC20-720, Regulations Governing Local School Boards and School Divisions** and repealing the following regulations entitled: **8VAC20-150, Management of the Student's Scholastic Record in the Public Schools of Virginia; 8VAC20-170, Regulations Governing Instructional Materials-Selection and Utilization By Local School Boards; 8VAC20-180, Regulations Governing School Community Programs; 8VAC20-210, Classifications of Expenditures; 8VAC20-240, Regulations Governing School Activity Funds; 8VAC20-250, Regulations Governing the Testing of Sight and Hearing of Pupils; 8VAC20-310, Rules Governing Instructions Concerning Drugs and Substance Abuse; 8VAC20-320, Regulations Governing Physical and Health Education; 8VAC20-390, Rules Governing Division Superintendent of Schools; 8VAC20-410, Regulations Governing Allowable Credit for Teaching Experience; 8VAC20-420, Regulations Governing Personnel in Public School Libraries Operated Under Joint Contract Under Control of Local School Board or Boards; 8VAC20-460, Regulations Governing Sick Leave Plan for Teachers; 8VAC20-490, Regulations Governing School Boards Local; 8VAC20-565, Regulations for the Protection of Students as Participants in Human Research.** The purpose of the proposed action is to repeal outdated regulations and consolidate necessary sections of various regulations into new regulations that school divisions will be able to access and implement more effectively and efficiently for the management of the public schools of Virginia.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on September 8, 2008.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy & Communications, Department of Education, P.O. Box 2120, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

VA.R. Doc. No. R08-1332; Filed July 7, 2008, 11:38 a.m.

## TITLE 12. HEALTH

### DEPARTMENT OF HEALTH

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider promulgating the following regulations: **12VAC5-650, Schedule of Civil Penalties.** The purpose of the proposed action is to establish a uniform schedule of civil penalties for violations of onsite sewage and alternative discharging sewage treatment system regulations.

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

Statutory Authority: §§32.1-12 and 32.1-164 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on September 3, 2008.

Agency Contact: Allen Knapp, Environmental Health Coordinator, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7458, FAX (804) 864-7475, or email [allen.knapp@vdh.virginia.gov](mailto:allen.knapp@vdh.virginia.gov).

VA.R. Doc. No. R08-1522; Filed July 16, 2008, 11:03 a.m.



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# REGULATIONS

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For information concerning the different types of regulations, see the Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

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## TITLE 2. AGRICULTURE

### PESTICIDE CONTROL BOARD

#### Fast-Track Regulation

Title of Regulation: **2VAC20-10. Public Participation Guidelines (amending 2VAC20-10-80, 2VAC20-10-100, 2VAC20-10-110).**

Statutory Authority: §§2.2-4007.02 and 3.1-249.30 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until September 3, 2008.

Effective Date: September 18, 2008.

Agency Contact: Kathy Dictor, Program Supervisor, Virginia Pesticide Control Board, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-0685, FAX (804) 786-9149, or email kathleen.dictor@vdacs.virginia.gov.

Basis: Section 3.1-249.30 of the Code of Virginia provides the authority to the board to promulgate "such other regulations as may be necessary." Section 2.2-4007.02 of the Code of Virginia requires the promulgation of public participation guidelines.

Purpose: The amendments allow the regulation to correctly cite the current section of the Code of Virginia.

Rationale for Using Fast-Track Process: These amendments make no substantive changes to the regulation, but only update citations of the Code of Virginia.

Substance: There are no new substantive provisions.

Issues: There are no issues associated with the proposed regulatory action.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Pesticide Board (Board) proposes to update citations to the Administrative Process Act.

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

Estimated Economic Impact. The current regulations cite outdated sections of the Code of Virginia. The Board

proposes to amend the citations to reflect current section numbers of the Code of Virginia. The proposed amendments have no impact on any requirements. The changes may provide a modest benefit in that readers of the regulations will find it easier to find relevant sections of the Code.

Businesses and Entities Affected. The Public Participation Guidelines potentially affect all entities and individuals who are interested in Board activity. There are currently 684 individuals who have signed up to receive notification of Virginia Pesticide Board regulatory activity through the Virginia Regulatory Town Hall.

Localities Particularly Affected. The proposed additional language does not particularly affect specific localities.

Projected Impact on Employment. The proposed additional language will not affect employment.

Effects on the Use and Value of Private Property. The proposed additional language will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed additional language will not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed additional language will not significantly affect small businesses.

Real Estate Development Costs. The proposed additional language will not significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs

required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

*The amendments update the citations for sections of the Administrative Process Act to the current section of the Code of Virginia.*

**2VAC20-10-80. Informational proceeding and notice thereof.**

A. Informational proceeding. The board may hold an informational proceeding pursuant to ~~§9-6.14-7.1~~ §2.2-4007.03 of the Code of Virginia on every regulation it proposes and on every proposed amendment to each regulation, notice for which shall comply with the provisions of this section of this chapter.

B. Notice of informational proceeding.

1. In addition to the required notice of opportunity for oral or written submittals published in the Virginia Register of Regulations pursuant to 2VAC20-10-70, and in a newspaper of general circulation published in the capital city, the staff of the Pesticide Control Board shall, at the board's direction, publish notice of the board's proposed regulation and informational proceeding thereon in:

- a. Other newspapers with substantial readership in Virginia, which notice shall meet the same requirements for notice to the public of the opportunity for oral or written submittals as the notice published in the newspaper of general circulation published at the capital city;
- b. Press releases;
- c. Mailings to those on its mailing lists; and
- d. Other means as directed by the commissioner or the board.

2. The staff of the Pesticide Control Board is directed to mail a copy of the proposed regulation and notice of the informational proceeding thereon to everyone who has participated in public discussion of the regulation pursuant to the current regulation making.

**2VAC20-10-100. Adoption of summary; of statement as to basis; and of description of public comment.**

The summary; statement as to basis, purpose, substance, issues, and impact of the regulation; and the summary description of the nature of the oral and written data, views, and arguments presented during the public proceedings and the board's comments thereon required by ~~§9-6.14-9-D~~ §2.2-4012 E of the Code of Virginia, shall be made a part of the board's minutes and included as a part of the board's regulation file.

**2VAC20-10-110. Application.**

The provisions of these public participation guidelines shall not apply to the making of regulations ~~exempted under §9-6.14:4.1 of the Code of Virginia~~ exempt from the Administrative Process Act.

VA.R. Doc. No. R08-1069; Filed July 3, 2008, 10:25 a.m.



**TITLE 4. CONSERVATION AND NATURAL RESOURCES**

**BOARD OF GAME AND INLAND FISHERIES**

**Final Regulation**

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt 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. The department is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Title of Regulation: **4VAC15-50. Game: Bear (amending 4VAC15-50-71).**

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

Effective Date: July 8, 2008.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

*The amendment removes the requirement that the ignition system of muzzleloading guns used for hunting bear be only of the flintlock or percussion type, thereby allowing all types of ignition systems to be used on muzzleloading*

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# Regulations

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*guns, including but not limited to flintlock, percussion, and electronic ignition systems.*

## **4VAC15-50-71. Muzzleloading gun hunting.**

A. It shall be lawful to hunt bear during the special muzzleloading season with muzzleloading guns from the Tuesday prior to the third Monday in November and for three consecutive hunting days following, both dates inclusive, except in Alleghany, Amherst, Augusta (west of Interstate 81 and that part east of Interstate 81 that is south of Interstate 64), Bath, Bedford, Bland, Botetourt, Buchanan, Campbell (west of Norfolk Southern Railroad), Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Nelson, Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski, Roanoke, Rockbridge, Rockingham (west of Interstate 81), Russell, Scott, Shenandoah (west of Interstate 81), Smyth, Tazewell, Washington, Wise and Wythe counties and 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.

C. A muzzleloading gun, for the purpose of this section, means a single shot ~~flintlock or percussion~~ weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber 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.

VA.R. Doc. No. R08-1295; Filed July 8, 2008, 2:00 p.m.

### **Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt 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. The board is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

**Title of Regulation:** 4VAC15-90. **Game:** Deer (amending 4VAC15-90-80).

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

**Effective Date:** July 8, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad

Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### **Summary:**

*The amendment removes the requirement that the ignition system of muzzleloading guns used for hunting deer be only of the flintlock or percussion type, thereby allowing all types of ignition systems to be used on muzzleloading guns, including but not limited to flintlock, percussion, and electronic ignition systems.*

## **4VAC15-90-80. Muzzleloading gun hunting.**

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

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns starting 18 consecutive hunting days immediately prior to and inclusive of the first Saturday in January, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County), and east of the Blue Ridge Mountains in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) and on national forest lands in Frederick County and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season in all cities, towns, and counties east of the Blue Ridge Mountains (except on national forest lands, state forest lands, state park lands except Occoneechee State Park, department-owned lands and Philpott Reservoir) and on the second Saturday only east of the Blue Ridge Mountains on state forest lands, state park lands except Occoneechee State Park, department-owned lands and on Philpott Reservoir. Deer of either sex may be taken during the entire early special muzzleloading season on Occoneechee State Park. Deer of either sex may be taken during the early special muzzleloading season only on the second Monday in November in all counties west of the Blue Ridge Mountains (except Clarke, Buchanan, Dickenson, Floyd, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and in Grayson Highlands State Park and national forest lands in Grayson County, and on private lands in Frederick, Roanoke, and Warren counties) and on national forest and department-owned lands in Roanoke County and on national forest lands in Frederick and Warren counties and on national forest lands

in Amherst, Bedford, and Nelson counties. Additionally, deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd counties and on private lands in Frederick, Roanoke and Warren counties.

D. Deer of either sex may be taken during the entire late special muzzleloading season in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29 except on national forest lands), Bedford (except on national forest lands), Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151 except on national forest lands), Patrick, and Pittsylvania (west of Norfolk Southern Railroad). It shall be lawful to hunt deer of either sex during the last six days of the late special muzzleloading season in all counties west of the Blue Ridge Mountains (except Buchanan, Dickenson, Floyd, in Grayson Highlands State Park and national forest lands in Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and on private lands in Roanoke and Warren Counties) and on national forest and department-owned lands in Roanoke County and on national forest lands in Warren County and on national forest lands in Amherst, Bedford, Frederick, and Nelson counties and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach. Provided further it shall be lawful to hunt deer of either sex during the last day only of the late special muzzleloading season in the counties of Lee, Russell, Scott, Smyth, Tazewell, and Washington and in Grayson Highlands State Park and national forest lands in Grayson County. Additionally, deer of either-sex may be taken during the entire late special muzzleloading season in Floyd County and on private lands in Roanoke and Warren Counties.

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

F. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns.

G. A muzzleloading gun, for the purpose of this section, means a single shot ~~flintlock or percussion~~ weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

H. 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.

VA.R. Doc. No. R08-1188; Filed July 8, 2008, 2:00 p.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to §2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of waterfowl. The department is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

**Title of Regulation:** 4VAC15-260. Game: Waterfowl and Waterfowl Blinds (amending 4VAC15-260-140).

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

**Effective Date:** July 8, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The amendment adds rails, snipe, moorhens, gallinules and mergansers to the list of species for which the use of nontoxic shot is required when hunting such species.*

**4VAC15-260-140. Nontoxic shot ~~required for waterfowl hunting~~ requirement for hunting of certain migratory game birds.**

It shall be unlawful to take or attempt to take ducks, geese, brant, swans, or coots, mergansers, rails, snipe, gallinules or moorhens while possessing shotshells loaded with shot other than steel, bismuth-tin, tungsten-iron or other nontoxic shot approved for such use by the director of the department, if such shot is permissible under federal migratory waterfowl regulations.

VA.R. Doc. No. R07-813; Filed July 8, 2008, 1:58 p.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision of §2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

**Title of Regulation:** 4VAC15-270. Game: Firearms (repealing 4VAC15-270-50).



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# Regulations

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

Effective Date: July 8, 2008.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

*The amendment rescinds the prohibition on the use of high velocity, long range-rifles, shotguns loaded with slugs and pistols or revolvers of a larger caliber than 22 rim-fire for hunting in Northumberland County; the regulation section repealed is inconsistent with a local ordinance on firearms adopted by the Northumberland County government.*

**~~4VAC15-270-50. Use of certain firearms prohibited in Northumberland County. (Repealed.)~~**

~~It shall be unlawful to use high velocity, long range rifles, shotguns loaded with slugs and pistols or revolvers of a larger calibre than 22 rim fire for hunting in Northumberland County.~~

VA.R. Doc. No. R08-1189; Filed July 8, 2008, 1:59 p.m.

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Proposed Regulation

Title of Regulation: **4VAC25-130. Coal Surface Mining Reclamation Regulations (amending 4VAC25-130-816.22, 4VAC25-130-816.43, 4VAC25-130-816.116, 4VAC25-130-817.22, 4VAC25-130-817.43, 4VAC25-130-817.116, 4VAC25-130-842.15).**

Statutory Authority: §§45.1-161.3 and 45.1-230 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on October 3, 2008.

Agency Contact: David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email david.spears@dmme.virginia.gov.

Basis: The Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under authority found in §§45.1-161.3, 45.1-230, and 45.1-242 of the Code of Virginia. Section 45.1-161.3 of the Code of Virginia empowers DMME, with the approval of the director, to promulgate regulations necessary or incidental to the performance of duties or execution of powers under Title 45.1 of the Code of Virginia. Section 45.1-230 of the Code of

Virginia empowers the DMME director to promulgate regulations as may be necessary to carry out the provisions of the Virginia Coal Surface Mining Control and Reclamation Act, (§45.1-226 et seq. of the Code of Virginia). Section 45.1-242 of the Code of Virginia directs the DMME director to, by regulation, establish performance standards applicable to all surface mining and reclamation operations. Establishment of these performance standards by regulation is mandatory.

Purpose: The purpose of the proposed action is to amend Virginia's Coal Surface Mining Reclamation Regulations to make them consistent with federal regulations on topsoil redistribution and measurement of revegetation success, to allow natural stream restoration design, and to clarify requirements for requesting reviews of decisions not to inspect or enforce. The action will produce environmental benefits in the form of enabling more successful reforestation of reclaimed mine sites, and more natural stream restoration channels. It will also provide clearer instructions to those wishing to apply for a review or request a hearing on the agency's decisions not to inspect or enforce sections of the regulations on particular sites.

Substance: The Department of Mines, Minerals and Energy is proposing amendments to existing sections of 4VAC25-130, Coal Surface Mining Reclamation Regulations.

Amendments to 4VAC25-130-816.22, 4VAC25-130-816.116, 4VAC25-130-817.22, and 4VAC25-130-817.116 are proposed to make these sections consistent with corresponding federal amendments regarding redistribution of topsoil and topsoil substitutes, and measuring success of revegetation. The Federal Office of Surface Mining amended its rules effective August 30, 2006 (30 CFR Parts 816 and 817; Fed. Register Vol. 71, No. 168, p. 51684 through p. 51706). As provided by 4VAC25-130-700.2 of the Virginia Coal Surface Mining Reclamation Regulation, "These regulations are promulgated pursuant to Chapter 19, Title 45.1 of the Code of Virginia (1950) as amended. In order for these regulations to receive approval by the United States Secretary of the Interior as part of the Commonwealth's permanent regulatory program, the Federal Surface Mining Control and Reclamation Act requires that these regulations be consistent with (as effective as) applicable regulations issued by the Secretary, contained in 30 CFR Chapter VII." As provided by 4VAC25-130-816.116(b)(3)(i) and 4VAC25-130-817.116(b)(3)(i), the division consulted with and obtained the approval of the proposed amendments from Virginia's Department of Forestry and Department of Game and Inland Fisheries.

4VAC25-130-816.43 and 4VAC25-130-817.43 are being amended to allow the approval of natural stream restoration channel designs, as approved by the U.S. Army Corps of Engineers. This will allow the restoration of an impacted

stream channel to one that is more natural and environmentally sound.

4VAC25-130-842.15 is being amended to provide a deadline for filing applications for review and requests for hearing on decisions not to inspect and enforce, and to address such requests to the Director of the Division of Mined Land Reclamation. These changes will make the section consistent with other parts of the chapter and with the Virginia Surface Mining Control and Reclamation Act (§45.1-226 et seq. of the Code of Virginia).

Issues: The proposed action will provide clear benefits to the public in the form of improved reforestation success and more natural stream restoration channels, thereby facilitating the return of more natural conditions to reclaimed mine sites. Benefits to be derived from clarified requirements for requesting review of decisions not to inspect or enforce include certainty about the deadline for making such requests and the specific part of the agency to which such requests should be addressed. No disadvantages are anticipated to the agency or the Commonwealth.

### The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Mines, Minerals and Energy (DMME) proposes to amend its Coal Surface Mining Reclamation Regulations to 1) maintain consistency, as mandated by the Code of Virginia, with corresponding federal regulations and 2) allow more flexible standards for forestry reclamation, as recommended by the federal Office of Surface Mining and Reclamation (OSM). DMME also proposes to amend these regulations so that individuals who may be affected by a DMME decision to not inspect have 30 days to request an informal review of that decision.

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

Estimated Economic Impact. Currently DMME regulations have very prescriptive requirements for surface mining land reclamation (DMME's current regulations are consistent with older federal regulations that were amended in 2006). Currently replacement topsoil, for instance, must be of uniform depth and streams must be rebuilt in a set way with prescribed replacement rock placement. Also, current regulations require all reclaimed land, except for land which will be used for farming, to have 90% herbaceous ground cover (grass planting).

DMME proposes to amend these regulations so that they are consistent with current federal regulations or current recommendations of OSM. Once these regulations are promulgated, topsoil on reclaimed land will be allowed to vary in depth, stream rebuilding requirements will be more flexible (and will likely require fewer rocks) and all reclaimed

land will not be subject to the 90% herbaceous ground cover requirement. Herbaceous ground cover, in combination with other plantings will have to be sufficient to prevent erosion but will not have to be a prescribed percentage of all planting.

DMME reports that these changes will lead to more successful forest reclamation and more natural stream restoration channels. Eliminating the requirement for uniform topsoil depth, for instance, will eliminate the need for grading equipment to make multiple passes over the same piece of land (until the depth of the soil is uniform). Consequently, topsoil will be less compacted so it will be a better medium for regrowing vegetation. Since herbaceous ground cover can crowd out, and inhibit the new growth of, trees and other forest plants, eliminating the 90% herbaceous ground cover requirement will encourage replanting that will be more likely to turn into forest land. These forests will be much more likely to attract wildlife.

These changes are also very likely to lower costs for regulated entities. DMME reports that new topsoil requirements will reduce the use of grading equipment. This equipment will only have to make one pass over land to be reclaimed rather than the three or more passes that DMME reports are now required. Regulated entities will likely have to purchase less topsoil (or topsoil substitute) on account of the proposed regulations. These entities will also likely have to purchase less grass seed (or seeding services) under the proposed regulations.

Under current regulations individuals who may be affected by a DMME decision to not inspect or take appropriate action may request an informal review of that decision at any time; DMME has 30 days (from receipt) to respond to such requests. DMME proposes to amend these regulations so that these individuals have 30 days (after an initial decision) to file requests for informal review. DMME reports that affected (or potentially affected) entities currently have 30 days to file formal requests; so this change will insure consistency between informal and formal request procedures. The agency and regulated entities will likely benefit from having agency decisions reviewable for only a finite period. Individuals who feel they are harmed in some way by an agency decision may incur some costs on account of this proposed regulatory change.

Businesses and Entities Affected. DMME reports that there are 60 active surface mines and 120 active underground mines in the Commonwealth. The owners of these mines, as well as individuals who reside around these mines, will be affected by the proposed regulatory changes.

Localities Particularly Affected. Localities in Southwestern Virginia, where mines operate, will be particularly affected by these regulatory changes. DMME does not anticipate these localities incurring any costs on account of the regulatory changes.

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# Regulations

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**Projected Impact on Employment.** Companies that sell rocks and seeding services to mines will likely see a reduction in mining companies' demand for these goods and services. This reduction is not likely, however, to be of great enough magnitude to significantly impact employment in these fields.

**Effects on the Use and Value of Private Property.** To the extent that these regulatory changes lower costs, mining operations in the Commonwealth may experience increases in profits.

**Small Businesses: Costs and Other Effects.** DMME reports that approximately 150 of the 180 mining operations in the Commonwealth qualify as small businesses. None of these businesses are likely to incur any costs on account of the proposed regulatory changes.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

**Real Estate Development Costs.** This regulatory action will likely have no affect on real estate development costs in the Commonwealth.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

## Summary:

*The proposed amendments will maintain consistency with corresponding federal regulations, allow more natural design of stream restoration channels, and clarify requirements for requesting reviews of decisions not to inspect or enforce. The sections being amended for consistency with federal regulations deal with redistribution of topsoil and topsoil substitutes, and measuring success of revegetation efforts.*

### **4VAC25-130-816.22. Topsoil and subsoil.**

#### (a) Removal.

(1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(ii) Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the division in accordance with Paragraph (b) of this section shall be removed as a separate layer from the area to be disturbed, and segregated.

(2) If topsoil is less than 6 inches thick, the permittee may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(3) The division may choose not to require the removal of topsoil for minor disturbances which--

(i) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(ii) Will not destroy the existing vegetation and will not cause erosion.

(4) Timing. All material to be removed under this section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

#### (b) Substitutes and supplements.

(1) Selected overburden materials may be substituted for, or used as a supplement to topsoil if the permittee demonstrates to the division, in accordance with 4VAC25-130-780.18, that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(2) Substituted or supplemental material shall be removed, segregated, and replaced in compliance with the requirements of this section for topsoil.

(3) Selected overburden materials may be substituted for or used as a supplement to topsoil, if the slope of the land containing the topsoil is greater than 60 percent (3v:5h)

and the selected overburden materials satisfy the following criteria:

- (i) The results of the analyses of the overburden required in 4VAC25-130-780.18 demonstrates the feasibility of using the overburden materials.
- (ii) The substitute material has a pH greater than 5.0, has a net acidity of less than five tons per 1,000 tons of material or a net alkalinity, and is suitable for sustaining vegetation consistent with the standards for vegetation in 4VAC25-130-816.111 through 4VAC25-130-816.116, and the approved postmining land use.

(c) Storage.

(1) Materials removed under Paragraph (a) of this section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

(2) Stockpiled materials shall--

- (i) Be selectively placed on a stable site within the permit area;
- (ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;
- (iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the division; and
- (iv) Not be moved until required for redistribution unless approved by the division.

(3) When long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under Paragraph (a)(1) of this section would be detrimental to the quality or quantity of those materials, the division may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until the materials are needed for later reclamation, provided that--

- (i) Such action will not permanently diminish the capability of the topsoil of the host site; and
- (ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) Redistribution.

Mine Spoil pH	Tons of Lime Needed per Acre to Increase pH to:					
	5.1 - 5.5			5.6 - 6.2		
Test	Sandstone	Shale	Mixed	Sandstone	Shale	Mixed
4.0 - 4.5	2	3	2	3	5	4
4.6 - 5.0	1	3	2	2	4	3

(1) Topsoil materials and substitutes removed under Paragraph (a) and (b) of this section shall be redistributed in a manner that--

- (i) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land use, contours, and surface-water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;
- (ii) Prevents excess compaction of the materials; and
- (iii) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under Paragraph (a) of this section, the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The division may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that--

- (i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation; and
- (ii) Such embankments will be otherwise stabilized.

(4) Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover. The types and amounts of nutrients and soil amendments shall be determined by soil tests performed by a qualified laboratory using standard methods which are approved by the division. If seeding is done without a site specific soil test--

- (i) Fertilization rates of 300 pounds of 16-27-14 or 500 pounds of 10-20-10 or equivalents per acre shall be used.
- (ii) Liming rates shall be in accordance with the following table:

# Regulations

5.1 - 5.5	0	2	1	1	3	2
5.6 - 6.0	0	1	0	0	2	1

(iii) Soil tests shall be performed promptly after topsoiling but before application of any supplementary nutrients and any additional lime and fertilizer applied as necessary.

(e) Subsoil segregation. The division may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of Paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of 4VAC25-130-816.111, 4VAC25-130-816.113, 4VAC25-130-816.114 and 4VAC25-130-816.116.

## 4VAC25-130-816.43. Diversions.

(a) General requirements.

(1) With the approval of the division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of 4VAC25-130-816.46 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the division under 4VAC25-130-816.41(i).

(2) The diversion and its appurtenant structures shall be designed, located, constructed, maintained, and used to--

- (i) Be stable;
- (ii) Provide protection against flooding and resultant damage to life and property;
- (iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and
- (iv) Comply with all applicable local, State and Federal laws and regulations.

(3) Temporary diversions shall be removed promptly when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this Part. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintaining water-treatment facilities as otherwise required. A permanent

diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

(4) Diversions which convey water continuously or frequently shall be ~~lined with rock rip rap to at least the normal flow depth, including an allowance for freeboard. Diversions constructed in competent bedrock and portions of channels above normal flow depth shall comply with the velocity limitations of Paragraph (5) below designed by a qualified registered professional engineer and constructed to ensure stability and compliance with the standards of this Part and any other criteria set by the division.~~

~~(5) The maximum permissible velocity for the following methods of stabilization are:~~

<del>Vegetated channel constructed in soil</del>	<del>3.5 feet per second</del>
<del>Vegetated channel with jute netting</del>	<del>5.0 feet per second</del>
<del>Rock rip rap lined channel</del>	<del>16.0 feet per second</del>
<del>Channel constructed in competent bedrock</del>	<del>No limit</del>

~~(6) (5) Channel side slopes shall be no steeper than 1.5h:1v in soil.~~

~~(7) (6) Adequate freeboard shall be provided to prevent overtopping. A minimum of 0.3 feet shall be included, with additional freeboard provided at curves, transitions, and other critical sections as required.~~

~~(8) (7) When rock rip rap lining is used, consideration shall be given to rip rap size, bedding, and filter material. Rock used for rip rap shall be non-degradable, and non-acid forming such as natural sand and gravel, sandstone or limestone. No clay, shale, or coal shall be used.~~

~~(9) (8) Sediment and other debris shall be removed and the diversion maintained to provide the design requirements throughout its operation.~~

~~(10) (9) The division may specify other criteria for diversions to meet the requirements of this section.~~

(b) Diversion of perennial and intermittent streams.

(1) Diversion of perennial and intermittent streams within the permit area may be approved by the division after making the finding relating to stream buffer zones called

for in 4VAC25-130-816.57 that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of Paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the standards of this Part and any other criteria set by the division.

(5) Channels which are constructed in backfilled material shall be formed during the backfilling and grading of the area. Unless the backfill material is of sufficiently low permeability, the channel shall be lined to prevent saturation of the backfill, loss of stream flow, or degradation of groundwater quality.

(6) Rock rip rap lining shall be placed in the channels of all diversions of perennial and intermittent streams to the normal flow depth, including adequate freeboard. Channels constructed in competent bedrock need not be rip rap lined.

(c) Diversion of miscellaneous flows.

(1) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the division. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in Paragraph (a) of this section.

(3) The requirements of Paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for miscellaneous flows are designed to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

(d) Steep slope conveyances.

(1) A steep slope conveyance, including but not limited to a rock rip rap flume, concrete flume, or a pipe, shall be

used to convey water down steep slopes to stable natural or constructed drainways. Steep slope conveyances shall be constructed at locations where concentrated flows may cause erosion.

(2) The capacity of the conveyance shall be equal to or greater than the capacity of the inlet ditch or drainage structure associated with it.

**4VAC25-130-816.116. Revegetation; standards for success.**

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of 4VAC25-130-816.111.

(1) Statistically valid sampling techniques shall be used for measuring success.

(2) Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard. The sampling techniques for measuring success shall use a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Sampling techniques for measuring woody plant stocking, ground cover, and production shall be in accordance with techniques approved by the division.

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or if approved by the division, a vegetative ground cover of 90% for areas planted only in herbaceous species and productivity at least equal to the productivity of the premining soils may be achieved. Premining productivity shall be based upon data of the U.S. Natural Resources Conservation Service and measured in such units as weight of material produced per acre or animal units supported.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or if approved by the division, crop yields shall be at least equal to the yields for reference crops from unmined lands. Reference crop yields shall be determined from the current yield records of representative local farms in the surrounding area or from the average county yields recognized by the U.S. Department of Agriculture.

(3) For areas to be developed for fish and wildlife habitat, undeveloped land, recreation, shelter belts, or ~~forest products, success of vegetation shall be determined on the~~

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# Regulations

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~~basis of tree and shrub forestry, the stocking and vegetative ground cover of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved reclamation plan.~~ Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the division on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program wide or a permit specific basis.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80% of the trees and shrubs used to determine such success shall have been in place for at least three years. Root crown or sprouts over one foot in height shall count as one toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(iii) Vegetative ground cover shall not be less than that required to control erosion and achieve the approved postmining land use.

(iv) Where commercial forest land is the approved postmining land use:

(A) The area shall have a minimum stocking of 400 trees per acre.

(B) All countable trees shall be commercial species and shall be well distributed over each acre stocked.

(C) Additionally, the area shall have an average of at least 40 wildlife food-producing shrubs per acre. The shrubs shall be suitably located for wildlife enhancement, and may be distributed or clustered.

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(A) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall approximate the stocking and ground cover on the surrounding unmined area and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement;

(B) Areas planted only in herbaceous species shall sustain a vegetative ground cover of 90%;

(C) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover ~~of 90% in accordance with guidance provided by the division and the approved forestry reclamation plan~~ and establish an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

(4) For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance, and shall be adequate to control erosion.

(c) (1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the division in accordance with subdivision (c)(3) of this section.

(2) The period of responsibility shall continue for a period of not less than:

(i) Five full years except as provided in subdivision (c)(2)(ii) of this section. The vegetation parameters identified in subsection (b) of this section for grazing land or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for remining. To the extent that the success standards are established by subdivision (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) The division may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices

after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

#### **4VAC25-130-817.22. Topsoil and subsoil.**

##### **(a) Removal.**

(1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(ii) Where the topsoil is of insufficient quantity or of poor quality for sustaining vegetation, the materials approved by the division in accordance with Paragraph (b) of this section shall be removed as a separate layer from the area to be disturbed, and segregated.

(2) If topsoil is less than six inches thick, the permittee may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(3) The division may choose not to require the removal of topsoil for minor disturbances which -

(i) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(ii) Will not destroy the existing vegetation and will not cause erosion.

(4) Timing. All materials to be removed under this section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

##### **(b) Substitutes and supplements.**

(1) Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the permittee demonstrates to the division, in accordance with 4VAC25-130-784.13 that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(2) Substituted or supplemental material shall be removed, segregated, and replaced in compliance with the requirements of this section for topsoil.

(3) Selected overburden materials may be substituted for or used as a supplement to topsoil, if the slope of the land containing the topsoil is greater than 60 percent (3v:5h) and the selected overburden materials satisfy the following criteria:

(i) The results of the analyses of the overburden required in 4VAC25-130-784.13 demonstrates the feasibility of using the overburden materials.

(ii) The substitute material has a pH greater than 5.0, has a net acidity of less than five tons per 1,000 tons of material or a net alkalinity, and is suitable for sustaining vegetation consistent with the standards for vegetation in 4VAC25-130-817.111 through 4VAC25-130-817.116, and the approved postmining land use.

##### **(c) Storage.**

(1) Materials removed under Paragraph (a) of this section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

(2) Stockpiled materials shall-

(i) Be selectively placed on a stable site within the permit area;

(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the division; and

(iv) Not be moved until required for redistribution unless approved by the division.

(3) Where long term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under Paragraph (a)(1) of this section would be detrimental to the quality or quantity of those materials, the division may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until the materials are needed for later reclamation, provided that-

(i) Such action will not permanently diminish the capability of the topsoil of the host site; and

(ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

##### **(d) Redistribution.**

(1) Topsoil materials and substitutes removed under Paragraph (a) and (b) of this section shall be redistributed in a manner that-

(i) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land use, contours, and surface water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit;



# Regulations

- (ii) Prevents excess compaction of the materials; and
- (iii) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under Paragraph (a) of this section, the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The division may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that-

- (i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use

Mine Spoil pH	Tons of Lime Needed per Acre to Increase pH to:					
	5.1 - 5.5			5.6 - 6.2		
Test	Sandstone	Shale	Mixed	Sandstone	Shale	Mixed
4.0 - 4.5	2	3	2	3	5	4
4.6 - 5.0	1	3	2	2	4	3
5.1 - 5.5	0	2	1	1	3	2
5.6 - 6.0	0	1	0	0	2	1

- (iii) Soil tests shall be performed promptly after topsoiling but before application of any supplementary nutrients and any additional lime and fertilizer applied as necessary.

(e) Subsoil segregation. The division may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of Paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of 4VAC25-130-817.111, 4VAC25-130-817.113, 4VAC25-130-817.114, and 4VAC25-130-817.116.

## 4VAC25-130-817.43. Diversions.

- (a) General requirements.

(1) With the approval of the division, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of 4VAC25-130-817.46 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert

the best technology currently available to prevent sedimentation; and

- (ii) Such embankments will be otherwise stabilized.

(4) Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover. The types and amounts of nutrients and soil amendments shall be determined by soil tests performed by a qualified laboratory using standard methods which are approved by the division. If seeding is done without a site specific soil test -

- (i) Fertilization rates of 300 pounds of 16-27-14 or 500 pounds of 10-20-10 or equivalents per acre shall be used.

- (ii) Liming rates shall be in accordance with the following table:

water into underground mines without approval of the division in accordance with 4VAC25-130-817.41(h).

- (2) The diversion and its appurtenant structures shall be designed, located, constructed, and maintained to-

- (i) Be stable;
- (ii) Provide protection against flooding and resultant damage to life and property;
- (iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and
- (iv) Comply with all applicable local, State, and Federal laws and regulations.

(3) Temporary diversions shall be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this Part. Before diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed, as necessary to prevent overtopping or failure of the facilities. This requirement shall not relieve the permittee from maintaining water treatment facilities as otherwise required. A permanent diversion or a

stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

(4) Diversions which convey water continuously or frequently shall be ~~lined with rock rip rap to at least the normal flow depth, including an allowance for freeboard. Diversions constructed in competent bedrock and portions of channels above normal flow depth shall comply with the velocity limitations of Paragraph (5) below~~ designed by a qualified registered professional engineer and constructed to ensure stability and compliance with the standards of this Part and any other criteria set by the division.

(5) ~~The maximum permissible velocity for the following methods of stabilization are:~~

Vegetated channel constructed in soil	3.5 feet per second
Vegetated channel with jute netting	5.0 feet per second
Rock rip rap lined channel	16.0 feet per second
Channel constructed in competent bedrock	No limit

~~(6)~~ (5) Channel side slopes shall be no steeper than 1.5h:1v in soil.

~~(7)~~ (6) Adequate freeboard shall be provided to prevent overtopping. A minimum of 0.3 feet shall be included, with additional freeboard provided at curves, transitions, and other critical sections as required.

~~(8)~~ (7) When rock rip rap lining is used, consideration shall be given to rip rap size, bedding, and filter material. Rock used for rip rap shall be non-degradable, and non-acid forming such as natural sand and gravel, sandstone or limestone. No clay, shale, or coal shall be used.

~~(9)~~ (8) Sediment and other debris shall be removed and the diversion maintained to provide the design requirements throughout its operation.

~~(10)~~ (9) The division may specify other criteria for diversions to meet the requirements of this section.

(b) Diversion of perennial and intermittent streams.

(1) Diversion of perennial and intermittent streams within the permit area may be approved by the division after making the finding relating to stream buffer zones called for in 4VAC25-130-817.57 that the diversions will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of Paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the standards of this Part and any other criteria set by the division.

(5) Channels which are constructed in backfilled material shall be formed during the backfilling and grading of the area. Unless the backfill material is of sufficiently low permeability, the channel shall be lined to prevent saturation of the backfill, loss of stream flow, or degradation of groundwater quality.

(6) Rock rip rap lining shall be placed in the channels of all diversions of perennial and intermittent streams to the normal flow depth, including adequate freeboard. Channels constructed in competent bedrock need not be rip rap lined.

(c) Diversion of miscellaneous flows.

(1) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the division. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in Paragraph (a) of this section.

(3) The requirements of Paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for miscellaneous flows are designed to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

(d) Steep slope water conveyances.

(1) A steep slope conveyance, including but not limited to a rock rip rap flume, concrete flume, or a pipe, shall be used to convey water down steep slopes to stable natural or constructed drainways. Steep slope conveyances shall be constructed at locations where concentrated flows may cause erosion.

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# Regulations

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(2) The capacity of the conveyance shall be equal to or greater than the capacity of the inlet ditch or drainage structure associated with it.

## **4VAC25-130-817.116. Revegetation; standards for success.**

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of 4VAC25-130-817.111.

(1) Statistically valid sampling techniques shall be used for measuring success.

(2) Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90% of the success standard. The sampling techniques for measuring success shall use a 90% statistical confidence interval (i.e., a one-sided test with a 0.10 alpha error). Sampling techniques for measuring woody plant stocking, ground cover, and production shall be in accordance with techniques approved by the division.

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or if approved by the division, a vegetative ground cover of 90% for areas planted only in herbaceous species and productivity at least equal to the productivity of the premining soils may be achieved. Premining productivity shall be based upon data of the U.S. Natural Resources Conservation Service and measured in such units as weight of material produced per acre or animal units supported.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or if approved by the division, crop yields shall be at least equal to the yields for reference crops from unmined lands. Reference crop yields shall be determined from the current yield records of representative local farms in the surrounding area or from the average county yields recognized by the U.S. Department of Agriculture.

(3) For areas to be developed for fish and wildlife habitat, undeveloped land, recreation, shelter belts, or ~~forest products, success of vegetation, shall be determined on the basis of tree and shrub forestry, the stocking and vegetative ground cover~~ of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control

erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved reclamation plan. Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the division on the basis of local and regional conditions and after consultation with and approval by the state agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program wide or a permit specific basis.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80% of the trees and shrubs used to determine such success shall have been in place for at least three years. Root crown or root sprouts over one foot in height shall count as one toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(iii) Vegetative ground cover shall not be less than that required to control erosion and achieve the approved postmining land use.

(iv) Where commercial forest land is the approved postmining land use:

(A) The area shall have a minimum stocking of 400 trees per acre.

(B) All countable trees shall be commercial species and shall be well distributed over each acre stocked.

(C) Additionally, the area shall have an average of at least 40 wildlife food-producing shrubs per acre. The shrubs shall be suitably located for wildlife enhancement, and may be distributed or clustered.

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(A) The stocking of trees, shrubs, half-shrubs and the ground cover established on the revegetated area shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement;

(B) Areas planted only in herbaceous species shall sustain a vegetative ground cover of 90%;

(C) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover ~~of 90%~~ in accordance with guidance provided by the division and the approved forestry reclamation plan and establish an average of 400 woody

plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

(4) For areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(c) (1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the division in accordance with subdivision (c)(3) of this section.

(2) The period of responsibility shall continue for a period of not less than

(i) Five full years except as provided in subdivision (c)(2)(ii) of this section. The vegetation parameters identified in subsection (b) of this section for grazing land or pastureland and cropland shall equal or exceed the approved success standard during the growing seasons of any two years of the responsibility period, except the first year. Areas approved for the other uses identified in subsection (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for remining. To the extent that the success standards are established by subdivision (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) The division may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin

control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

**4VAC25-130-842.15. Review of decision not to inspect or enforce.**

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the division to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under 4VAC25-130-842.12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The division shall conduct the review and inform the person, in writing, of the results of the review within 30 days of receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under the Virginia Freedom of Information Act (§2.2-3700 et seq. of the Code of Virginia).

(c) Informal review under this section shall not affect any right to formal review under §45.1-249 of the Act or to a citizen's suit under §45.1-246.1 of the Act.

(d) Any person who requested a review of a decision not to inspect or enforce under this section and who is or may be adversely affected by any determination made under subsection (b) of this section may request review of that determination by filing within 30 days of the division's determination an application for formal review and request for hearing under the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia). All requests for hearing or appeals for review and reconsideration made under this section shall be filed with the Director, Division of Mined Land Reclamation, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

VA.R. Doc. No. R07-275; Filed July 14, 2008, 11:30 a.m.

**TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS**

**STATE CORPORATION COMMISSION**

**Proposed Regulation**

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia,

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# Regulations

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which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** 10VAC5-200. Payday Lending (adding 10VAC5-200-115).

**Statutory Authority:** §§6.1-453.1, 6.1-460, and 12.1-13 of the Code of Virginia.

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

**Public Comments:** Public comments may be submitted until 5 p.m. on August 20, 2008.

**Agency Contact:** E. J. Face, Jr., Bureau of Finance Commissioner, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804) 371-9416, or email [joe.face@scc.virginia.gov](mailto:joe.face@scc.virginia.gov).

**Summary:**

*The State Corporation Commission is proposing a regulation in connection with Chapter 849 of the 2008 Acts of Assembly, which generally amends the Payday Loan Act. Included in Chapter 849 are provisions that require licensed payday lenders to query a database before making a payday loan, and to pay a fee to the database provider in connection with each consummated loan. The amount of the database inquiry fee is required to be calculated in accordance with a schedule set by the commission.*

*The proposed regulation specifies that the transaction fee will be no greater than \$5.00.*

AT RICHMOND, JULY 10, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2008-00309

Ex Parte: In re: payday lending  
database inquiry fee

**ORDER TO TAKE NOTICE**

WHEREAS, Chapter 849 of the 2008 Acts of Assembly ("Chapter 849") amends the Payday Loan Act, § 6.1-444 et seq. of the Code of Virginia, effective January 1, 2009;

WHEREAS, Chapter 849 requires the State Corporation Commission ("Commission") to certify and contract with one or more third parties to develop, implement, and maintain a real-time Internet-accessible database that contains such payday loan information as the Commission may require;

WHEREAS, Chapter 849 requires licensed payday lenders to query the database before making a payday loan, and to pay a fee to the database provider in connection with each

consummated loan to defray the cost of submitting the database inquiry;

WHEREAS, Chapter 849 provides that the amount of the database inquiry fee shall be calculated in accordance with a schedule set by the Commission, and shall bear a reasonable relationship to the actual cost of the operation of the database;

WHEREAS, the Commission is in the process of procuring a contract or contracts and has not selected a successful vendor or vendors so the actual cost of the database is not yet known;

WHEREAS, however, the database must be operational by January 1, 2009;

WHEREAS, § 6.1-458 of the Code of Virginia authorizes the Commission to promulgate regulations to effect the purposes of the Payday Loan Act; and

WHEREAS, the Commissioner of Financial Institutions has proposed that the Commission adopt a regulation to establish the amount of the database inquiry fee that the licensee shall pay to the database provider in connection with each consummated loan to defray the cost of submitting the database inquiry, and to further provide notice that the fee will be no greater than \$5.00 which is the maximum verification fee licensees are allowed to charge by statute;

IT IS THEREFORE ORDERED THAT:

(1) The proposed regulation, 10 VAC 5-200-115, is appended hereto and made a part of the record in this case.

(2) Comments or requests for a hearing on the transaction fee or proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before August 20, 2008. All correspondence shall contain a reference to Case No. BFI-2008-00309. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) The proposed regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

AN ATTESTED COPY hereof, together with a copy of the proposed regulation, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order and the proposed regulation to all licensed payday lenders and such other interested persons as he may designate.

**10VAC5-200-115. Database inquiry fee.**

Pursuant to subdivision B 4 of §6.1-453.1 of the Code of Virginia, a licensed payday lender shall pay a database inquiry fee to the database provider in connection with every payday loan consummated by the licensee. The amount of the database inquiry fee shall not exceed \$5.00 per loan, which shall be remitted by each licensee directly to the database provider on a weekly basis.

VA.R. Doc. No. R08-1401; Filed July 15, 2008, 7:54 a.m.

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## TITLE 12. HEALTH

### BOARD OF HEALTH

#### Proposed Regulation

**Title of Regulation:** 12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-80).

**Statutory Authority:** §32.1-35 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comments:** Public comments may be submitted until 5 p.m. on October 3, 2008.

**Agency Contact:** Diane Woolard, Ph.D., Director, Disease Surveillance, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8124, or email [diane.woolard@vdh.virginia.gov](mailto:diane.woolard@vdh.virginia.gov).

**Basis:** Section 32.1-35 of the Code of Virginia authorizes the Board of Health to promulgate a list of diseases that must be reported to the Department of Health. The department will use the data to compile statistics on the occurrences of these infections in different localities and populations across Virginia.

**Purpose:** Methicillin-resistant *Staphylococcus aureus* (MRSA) has the potential to cause severe illness. The public has grown increasingly concerned about this threat to the health of their communities. The Virginia Department of Health is interested in promulgating regulations to require the reporting of the most severe MRSA infections confirmed by laboratories in order to better characterize and track the occurrence of these infections in Virginia communities.

**Substance:** 12VAC5-90-80 B is being amended to add methicillin-resistant *Staphylococcus aureus* in normally sterile body sites to the requirement to report vancomycin-intermediate and -resistant *Staphylococcus aureus* infections. The reporting requirement applies only to laboratory directors.

**Issues:** The primary advantage to the public is that there will now be an additional source of information about these infections, about which the public has concerns. The primary advantage to the agency is that this regulation will allow public health scientists to better characterize and track the occurrence of these infections in Virginia communities. The regulatory action poses no disadvantages to the public or the Commonwealth. This requirement will increase the workload for laboratory staff to report the infections.

#### The Department of Planning and Budget's Economic Impact Analysis:

**Summary of the Proposed Amendments to Regulation.** The proposed regulations add permanently Methicillin-Resistant *Staphylococcus aureus* to the list of diseases that must be reported to the Virginia Department of Health by laboratories. The proposed changes have been in effect since October 2007 under emergency regulations.

**Result of Analysis.** There is insufficient data to accurately compare the magnitude of the benefits versus the costs.

**Estimated Economic Impact.** The State Board of Health (Board) proposes to make permanent emergency regulations that have been in effect since October 2007. The proposed changes require laboratory directors to report Methicillin-Resistant *Staphylococcus aureus* (MRSA) infections confirmed from specimens collected from normally sterile sites of the body.

Health professionals generally consider the presence of MRSA bacteria on the skin or in the nose normal. Though these bacteria are generally harmless, they may cause serious illness in individuals with weakened immune systems. Thus, the Board proposes to require reporting of cases when specimens collected from normally sterile sites of the body are infected.

The compliance costs of the proposed reporting are expected to be small. The main compliance costs are the staff time devoted to report the confirmed infections and the cost of reporting which in most cases would include the cost of stationeries and postage. Also, Virginia Department of Health (VDH) will have to devote some staff time to process the reports it receives. VDH estimates that approximately 100 laboratories will be reporting about 2,700 cases annually.

Expected benefits from the proposed regulations also appear to be small. Unlike other reportable diseases on the list, there does not appear to be much that VDH can do once a confirmed infection is reported. However, the proposed reporting would afford VDH an easy way of monitoring MRSA infections in the Commonwealth.

**Businesses and Entities Affected.** The proposed regulations apply to approximately 100 laboratories.

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# Regulations

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Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. No significant impact on employment is expected other than the increase in staff time to report and process about 2,700 occurrences expected per year.

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

Small Businesses: Costs and Other Effects. Approximately 2/3 of the affected 100 laboratories are believed to be small businesses. Laboratories that are small businesses are expected to incur small staff time and office expenses needed for reporting of MRSA cases.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no other known alternative that would achieve the same goal less costly.

Real Estate Development Costs. The proposed regulations are not expected to create any real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

*This proposed amendment will make permanent an emergency regulation that went into effect on October 24, 2007. It requires laboratory directors to report methicillin-resistant Staphylococcus aureus (MRSA) infections confirmed from specimens collected from normally sterile sites of the body, which indicate a serious, invasive form of the infection.*

## Part III Reporting of Disease

### 12VAC5-90-80. Reportable disease list.

A. The board declares suspected or confirmed cases of the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in 12VAC5-90-90. Conditions identified by an asterisk (\*) require rapid communication to the local health department within 24 hours of suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Acquired immunodeficiency syndrome (AIDS)  
Amebiasis  
\*Anthrax  
Arboviral infections (e.g., EEE, LAC, SLE, WNV)  
\*Botulism  
\*Brucellosis  
Campylobacteriosis  
Chancroid  
Chickenpox (Varicella)  
Chlamydia trachomatis infection  
\*Cholera  
Creutzfeldt-Jakob disease if <55 years of age  
Cryptosporidiosis  
Cyclosporiasis  
\*Diphtheria  
\*Disease caused by an agent that may have been used as a weapon  
Ehrlichiosis  
Escherichia coli infection, Shiga toxin-producing  
Giardiasis  
Gonorrhea  
Granuloma inguinale  
\*Haemophilus influenzae infection, invasive  
Hantavirus pulmonary syndrome

Hemolytic uremic syndrome (HUS)  
 \*Hepatitis A  
 Hepatitis B: (acute and chronic)  
 Hepatitis C (acute and chronic)  
 Hepatitis, other acute viral  
 Human immunodeficiency virus (HIV) infection  
 Influenza  
 \*Influenza-associated deaths in children <18 years of age  
 Kawasaki syndrome  
 Lead-elevated blood levels  
 Legionellosis  
 Leprosy (Hansen's disease)  
 Listeriosis  
 Lyme disease  
 Lymphogranuloma venereum  
 Malaria  
 \*Measles (Rubeola)  
 \*Meningococcal disease  
 \*Monkeypox  
 Mumps  
 Ophthalmia neonatorum  
 \*Outbreaks, all (including but not limited to foodborne, nosocomial, occupational, toxic substance-related, and waterborne)  
 \*Pertussis  
 \*Plague  
 \*Poliomyelitis  
 \*Psittacosis  
 \*Q fever  
 \*Rabies, human and animal  
 Rabies treatment, post-exposure  
 Rocky Mountain spotted fever  
 \*Rubella, including congenital rubella syndrome  
 Salmonellosis  
 \*Severe acute respiratory syndrome (SARS)  
 Shigellosis  
 \*Smallpox (Variola)

Streptococcal disease, Group A, invasive  
 Streptococcus pneumoniae infection, invasive, in children <5 years of age  
 Syphilis (report \*primary and \*secondary syphilis by rapid means)  
 Tetanus  
 Toxic shock syndrome  
 Toxic substance-related illness  
 Trichinosis (Trichinellosis)  
 \*Tuberculosis, active disease  
 Tuberculosis infection in children <4 years of age  
 \*Tularemia  
 \*Typhoid fever  
 \*Unusual occurrence of disease of public health concern  
 \*Vaccinia, disease or adverse event  
 Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection  
 \*Vibrio infection  
 \*Viral hemorrhagic fever  
 \*Yellow fever  
 Yersiniosis

**B. Conditions reportable by directors of laboratories.**

Conditions identified by an asterisk (\*) require rapid communication to the local health department within 24 hours of suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Amebiasis—by microscopic examination, culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection  
 \*Anthrax—by culture, antigen detection or nucleic acid detection  
 Arboviral infection—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection  
 \*Botulism—by culture or identification of toxin in a clinical specimen  
 \*Brucellosis—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection  
 Campylobacteriosis—by culture



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# Regulations

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Chancroid—by culture, antigen detection, or nucleic acid detection

Chickenpox (varicella)—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Chlamydia trachomatis infection—by culture, antigen detection, nucleic acid detection or, for lymphogranuloma venereum, serologic results consistent with recent infection

\*Cholera—by culture or serologic results consistent with recent infection

Creutzfeldt-Jakob disease if <55 years of age—presumptive diagnosis—by histopathology in patients under the age of 55 years

Cryptosporidiosis—by microscopic examination, antigen detection, or nucleic acid detection

Cyclosporiasis—by microscopic examination or nucleic acid detection

\*Diphtheria—by culture

Ehrlichiosis—by culture, nucleic acid detection, or serologic results consistent with recent infection

Escherichia coli infection, Shiga toxin-producing—by culture of E. coli O157 or other Shiga toxin-producing E. coli, Shiga toxin detection (e.g., by EIA), or nucleic acid detection

Giardiasis—by microscopic examination or antigen detection

Gonorrhea—by microscopic examination of a urethral smear specimen (males only), culture, antigen detection, or nucleic acid detection

\*Haemophilus influenzae infection, invasive—by culture, antigen detection, or nucleic acid detection from a normally sterile site

Hantavirus pulmonary syndrome—by antigen detection (immunohistochemistry), nucleic acid detection, or serologic results consistent with recent infection

\*Hepatitis A—by detection of IgM antibodies

Hepatitis B (acute and chronic)—by detection of HBsAg or IgM antibodies

Hepatitis C (acute and chronic)—by hepatitis C virus antibody (anti-HCV) screening test positive with a signal-to-cutoff ratio predictive of a true positive as determined for the particular assay as defined by CDC, HCV antibody positive by immunoblot (RIBA), or HCV RNA positive by nucleic acid test. For all hepatitis C patients, also report available results of serum alanine aminotransferase (ALT), anti-HAV IgM, anti-HBc IgM, and HBsAg

Human immunodeficiency virus infection—by culture, antigen detection, nucleic acid detection, or detection of antibody confirmed with a supplemental test. For HIV-infected patients, report all results of CD4 and HIV viral load tests

Influenza—by culture, antigen detection by direct fluorescent antibody (DFA) or nucleic acid detection

Lead-elevated blood levels—by blood lead level greater than or equal to 10 µg/dL in children ages 0-15 years, or greater than or equal to 25 µg/dL in persons older than 15 years of age

Legionellosis—by culture, antigen detection including urinary antigen, nucleic acid detection, or serologic results consistent with recent infection

Listeriosis—by culture

Malaria—by microscopic examination, antigen detection, or nucleic acid detection

\*Measles (rubeola)—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Meningococcal disease—by culture or antigen detection from a normally sterile site

\*Monkeypox—by culture nucleic acid detection

Mumps—by culture, nucleic acid detection, or serologic results consistent with recent infection

\*Mycobacterial diseases—(See 12VAC5-90-225 B) Report any of the following:

1. Acid fast bacilli by microscopic examination;
2. Mycobacterial identification—preliminary and final identification by culture or nucleic acid detection;
3. Drug susceptibility test results for M. tuberculosis.

\*Pertussis—by culture, antigen detection, or nucleic acid detection

\*Plague—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Poliomyelitis—by culture

\*Psittacosis—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Q fever—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Rabies, human and animal—by culture, antigen detection by direct fluorescent antibody test, nucleic acid detection,

or, for humans only, serologic results consistent with recent infection

Rocky Mountain spotted fever—by culture, antigen detection (including immunohistochemical staining), nucleic acid detection, or serologic results consistent with recent infection

\*Rubella—by culture, nucleic acid detection, or serologic results consistent with recent infection

Salmonellosis—by culture

\*Severe acute respiratory syndrome—by culture, nucleic acid detection, or serologic results consistent with recent infection

Shigellosis—by culture

\*Smallpox (variola)—by culture or nucleic acid detection

Staphylococcus aureus infection, resistant, as defined below:

1. Methicillin-resistant - by antimicrobial susceptibility testing of a Staphylococcus aureus isolate, with a susceptibility result indicating methicillin resistance, cultured from a normally sterile site;

2. Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection - by antimicrobial susceptibility testing of a Staphylococcus aureus isolate, with a vancomycin susceptibility result of intermediate or resistant, cultured from a clinical specimen.

Streptococcal disease, Group A, invasive—by culture from a normally sterile site

Streptococcus pneumoniae infection, invasive, in children <5 years of age—by culture from a normally sterile site in a child under the age of five years

\*Syphilis—by microscopic examination (including dark field), antigen detection (including direct fluorescent antibody), or serology by either treponemal or nontreponemal methods

Toxic substance-related illness—by blood or urine laboratory findings above the normal range, including but not limited to heavy metals, pesticides, and industrial-type solvents and gases

Trichinosis (trichinellosis)—by microscopic examination of a muscle biopsy or serologic results consistent with recent infection

\*Tularemia—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Typhoid fever—by culture

\*Vaccinia, disease or adverse event—by culture or nucleic acid detection

~~Vancomycin intermediate or vancomycin-resistant Staphylococcus aureus infection by antimicrobial susceptibility testing of a Staphylococcus aureus isolate, with a vancomycin susceptibility result of intermediate or resistant, cultured from a clinical specimen~~

\*Vibrio infection—by culture

\*Viral hemorrhagic fever—by culture, antigen detection (including immunohistochemical staining), nucleic acid detection, or serologic results consistent with recent infection

\*Yellow fever—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Yersiniosis—by culture, nucleic acid detection, or serologic results consistent with recent infection

C. Reportable diseases requiring rapid communication. Certain of the diseases in the list of reportable diseases, because of their extremely contagious nature or their potential for greater harm, or both, require immediate identification and control. Reporting of persons confirmed or suspected of having these diseases, listed below, shall be made within 24 hours by the most rapid means available, preferably that of telecommunication (e.g., telephone, telephone transmitted facsimile, pagers, etc.) to the local health director or other professional employee of the department. (These same diseases are also identified by an asterisk (\*) in subsection A and subsection B, where applicable, of this section.)

Anthrax

Botulism

Brucellosis

Cholera

Diphtheria

Disease caused by an agent that may have been used as a weapon

Haemophilus influenzae infection, invasive

Hepatitis A

Influenza deaths in children <18 years of age

Measles (Rubeola)

Meningococcal disease

Monkeypox

Outbreaks, all

Pertussis

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# Regulations

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VA.R. Doc. No. R08-1024; Filed July 16, 2008, 11:41 a.m.

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

### Proposed Regulation

**Title of Regulation:** 12VAC35-200. Regulations for Respite and Emergency Care Admission to Mental Retardation Facilities (amending 12VAC35-200-10, 12VAC35-200-20, 12VAC35-200-30).

**Statutory Authority:** §§37.2-203 and 37.2-807 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comments:** Public comments may be submitted until 5 p.m. on October 3, 2008.

**Agency Contact:** Dawn Traver, Office of Mental Retardation Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218-1797, telephone (757) 253-4316, FAX (757) 253-5440, or email dawn.traver@co.dmhmrzas.virginia.gov.

**Basis:** The State Mental Health, Mental Retardation and Substance Abuse Services Board has the authority under §§37.2-203 and 37.2-807 of the Code of Virginia to adopt these regulations. The decision to adopt regulations for providing admissions for emergency and respite services is discretionary, but if the board permits such admissions, the regulations are mandatory under §37.2-807 of the Code of Virginia.

**Purpose:** These revisions are necessary to assure consistency with statutory requirements and ensure that individuals who need respite or emergency services in state facilities have accurate legal guidance for seeking such admissions. State training centers can provide an important safety net of services for persons with mental retardation and their families who qualify for respite or emergency services.

The goal of this action is to ensure that requirements for respite or emergency admissions are clearly articulated to ensure that citizens have access to such services when it is necessary and appropriate. The changes are intended to eliminate any confusion for staff and the public, facilitate communication, and expedite the admission process for emergency or respite services. Therefore, this regulatory action is essential to protect the health, safety, and welfare of citizens.

**Substance:** A definition for "authorized representative" has been added to be consistent with the terminology in the recently amended Human Rights Regulations, 12VAC35-115. The definition of "legally authorized representative" has been

Plague  
Poliomyelitis  
Psittacosis  
Q fever  
Rabies, human and animal  
Rubella  
Severe acute respiratory syndrome (SARS)  
Smallpox (Variola)  
Syphilis, primary and secondary  
Tuberculosis, active disease  
Tularemia  
Typhoid fever  
Unusual occurrence of disease of public health concern  
Vaccinia, disease or adverse event  
Vibrio infection  
Viral hemorrhagic fever  
Yellow Fever

D. Toxic substance-related illnesses. All toxic substance-related illnesses, including pesticide and heavy metal poisoning or illness resulting from exposure to an occupational dust or fiber or radioactive substance, shall be reported.

If such illness is verified or suspected and presents an emergency or a serious threat to public health or safety, the report of such illness shall be by rapid communication as in subsection C of this section.

E. Outbreaks. The occurrence of outbreaks or clusters of any illness which may represent a group expression of an illness which may be of public health concern shall be reported to the local health department by the most rapid means available.

F. Unusual or ill-defined diseases or emerging or reemerging pathogens. Unusual or emerging conditions of public health concern shall be reported to the local health department by the most rapid means available. In addition, the commissioner or his designee may establish surveillance systems for diseases or conditions that are not on the list of reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk factors for the disease, and to identify and implement appropriate action to protect public health. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by §32.1-38 of the Code of Virginia.

stricken. The definition of "catastrophe" has been stricken because the requirement that an emergency admission be the result of a catastrophe has been revised to a more flexible interpretation of a "change in an individual's circumstances." A definition of "individual" has been added for clarity. The definition of "mental retardation" is updated to reflect the current definition in the Code of Virginia.

The requirements for an application for respite services are revised to include a written statement by the individual or family member specifically requesting such services.

Changes are made to more closely align admissions requirements with the enrollment requirements for the Mental Retardation (MR) Waiver (e.g., regarding psychological evaluation requirements), in the event that a facility should be a MR Waiver provider of respite services funded by the MR Waiver.

A more precise time limit has been given for facility directors to respond to requests for respite admissions (i.e., "by the end of the next working day after receipt of a completed application package").

Issue: Throughout the regulations language changes have been made to support the concept of person-centeredness and a consumer-driven system of services. These changes include the replacement of the word "applicant" with "individual" and deletion of "care and supervision" in the provisions in 12VAC35-200-20 B 2. The admission requirements have also been revised to require a statement from an individual or family to specifically indicate a desire for respite services in the facility.

The length of time an individual may remain in a facility is tied to "...the limits defined in §37.2-807 of the Code of Virginia." Therefore, the regulations would be consistent with any future change in this Code requirement.

The definition of "authorized representative" is updated to conform to the recently amended Human Rights Regulations. This will eliminate confusion and promote consistent regulatory and administrative processes.

There are no other pertinent matters of interest to the regulated community, government officials, and the public. No disadvantages to the public or the Commonwealth are noted.

### The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The State Mental Health, Mental Retardation and Substance Abuse Services Board (Board) proposes to revise the existing Regulations for Respite and Emergency Care Admissions to Mental Retardation Facilities. The required materials for application for respite services will be revised to include a written statement from the individual, a family member, or

authorized representative that specifically requests services in the facility. The timeframe for decision-making on admission requests for respite services will be revised to be more specific. Several definitions will be revised for clarity and consistency with the Code of Virginia and other regulations of the Board. Code references will be updated.

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

Estimated Economic Impact. The Regulations for Respite and Emergency Care Admissions to Mental Retardation Facilities provide legal guidance for individuals that need respite or emergency services in state facilities. According to the regulation, applications for respite services in state facilities shall be processed through the case management community services board (CSB). A parent, guardian or authorized representative seeking respite services for an individual with mental retardation shall apply first to the CSB that serves the area where the individual, or if a minor, his parent or guardian, is currently residing. If the CSB determines that respite services for the individual are not available in the community, it shall forward the application to the facility serving individuals with mental retardation from that geographic section of the state in which the individual, or his parent or guardian, is currently residing.

The Board proposes to add a provision that requires a statement from the individual, a family member, or authorized representative that specifically requests services in the facility for the application for respite services. No such statement is required under the current regulations. This additional requirement will help to ensure that the services meet the individual's need and will likely expedite the processing of the application. According to DMHMRSAS, a handwritten request would be considered adequate. Therefore, this proposed change will likely benefit individuals who need respite services in state facilities without creating any significant costs to the individuals, their family members, or authorized representatives.

Under the current regulations, the facility director, or designee, shall provide written notice of his/her decision to CSB within a reasonable time of receipt of the completed application for respite services. The proposed regulation will require that decision be made by the end of the next working day following receipt of a complete application package. This proposed change will standardize the timeframe for decision-making and will help to ensure timely response from the facility. According to DMHMRSAS, the processing time for a respite admission is typically two days. Therefore, the proposed change will benefit the individuals seeking respite services in state facilities without creating any significant costs to the facilities.

The Board also proposes to revise several definitions for clarity and consistency with the Code of Virginia and other

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# Regulations

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regulations of the Board. The title of this regulation will be changed from "Regulations for Respite and Emergency Care Admissions to Mental Retardation Facilities" to "Regulations for Respite and Emergency Care Admission to State Training Centers" to be consistent with the language in the Code of Virginia.<sup>1</sup> Code references in the regulations will be updated to reflect the re-codification of §§ 37.1 to §§ 37.2 effective October 1, 2005. These proposed changes will improve clarity of the regulations, reduce possible confusion for staff and the public, and will likely expedite the admission process for respite or emergency services. The proposed regulations will ensure that individuals who need respite or emergency services in state facilities have access to such services when necessary and appropriate, which will better protect the health and welfare of the citizens in the Commonwealth. Language that quotes the Code of Virginia will be replaced with references to the Code, which will save the cost of future time spent on revision of the regulations as a consequence of statutory changes.

**Businesses and Entities Affected.** Currently there are five state training centers and 39 local community services boards in the Commonwealth of Virginia. DMHMRSAS estimates that there are approximately 200-250 annual requests for respite admissions statewide.

**Localities Particularly Affected.** The proposed regulations apply to all localities in the Commonwealth.

**Projected Impact on Employment.** The proposed changes will likely not have any impact on employment.

**Effects on the Use and Value of Private Property.** The proposed changes will likely not have any impact on the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed changes will not directly affect any small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed changes will not directly affect any small businesses.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small

businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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<sup>1</sup> According to § 37.2-100 of the Code of Virginia, "state training center" means a facility operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the treatment, training, or habilitation of persons with mental retardation.

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

Summary:

*This action revises the statutory references to reflect the recent recodification of Title 37.1 to Title 37.2 of the Code of Virginia. Changes have been made to definitions of "authorized representative," and "mental retardation" and several other terms for clarity and consistency with the Code of Virginia and other regulations of the board. The application process and requirements for admissions for respite and emergency services have been clarified. The application materials are revised to require a statement from the individual, family member or authorized representative specifically requesting services in the facility.*

CHAPTER 200  
REGULATIONS FOR RESPITE AND EMERGENCY  
CARE ADMISSION TO MENTAL RETARDATION  
FACILITIES STATE TRAINING CENTERS

**12VAC35-200-10. Definitions.**

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

"~~Applicant~~" means a person for whom respite care or emergency care services are sought.

"Authorized representative" means a person permitted by law or regulations to authorize the disclosure of information or consent to treatment and services, including medical treatment, or for the participation in human research on behalf of an individual who lacks the mental capacity to make these decisions.

"Case management community services board (~~CSB~~)" or "CSB" means a citizens board established pursuant to ~~§37.1-495~~ §37.2-501 of the Code of Virginia that serves the area in

which an adult resides or in which a minor's parent, guardian or legally authorized representative resides. ~~The case management CSB is responsible for case management, liaison with the facility when an individual is admitted to a state training center, and predischage planning. If an individual, or the parents, guardian or legally authorized representative on behalf of an individual, chooses to reside in a different locality after discharge from the facility, the community services board serving that locality becomes the case management CSB and works with the original case management CSB, the individual receiving services and the state facility to effect a smooth transition and discharge. For the purpose of these regulations, CSB also includes a behavioral health authority established pursuant to §37.2-602 of the Code of Virginia.~~

"Catastrophe" means an unexpected or imminent change in an individual's living situation or environment that poses a risk of serious physical or emotional harm to that individual.

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Discharge plan" or "~~predischage plan~~" means a written plan prepared by the case management CSB in consultation with the state facility pursuant to ~~§37.1-197.4~~ §37.2-505 of the Code of Virginia. This plan is prepared when the individual is admitted to the facility and documents the planning for services after discharge.

"Emergency ~~care admission~~" means the temporary placement of an individual with mental retardation in a facility when immediate care is necessary ~~due to a catastrophe~~ and no other community alternatives are available. ~~The total number of days that emergency or respite care services, or both, are used shall not exceed 21 consecutive days or 75 days in a calendar year. This emergency care is not intended as a means of providing evaluation and program development services, nor is it intended to be used to obtain treatment of medical or behavioral problems.~~

"Facility" means a state training center for individuals with mental retardation under the supervision and management of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Guardianship Guardian" means:

1. For minors -- ~~An an~~ an adult who is either appointed by the court as a legal guardian of ~~said a~~ a minor or exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent upon provisional adoption or otherwise by operation of law.
2. For adults -- a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include making decisions regarding the individual's

support, care, health, safety, habilitation, education and therapeutic treatment. Refer to definition of "incapacitated person" at ~~§37.1-134.6~~ §37.2-1000 of the Code of Virginia.

"Individual" means a person for whom respite or emergency services are sought.

"Least ~~Less~~ restrictive setting" means the ~~treatment and conditions of treatment that, separately or in combination, are~~ service location that is no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit and protection from harm (to self and others) based on an individual's needs.

"~~Legally authorized representative~~" means a person permitted by law or regulations to give informed consent for disclosure of information and ~~give informed consent to treatment including medical treatment on behalf of an individual who lacks the mental capacity to make these decisions.~~

"Mental retardation" means ~~the substantial subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.~~

"Respite ~~care~~" means ~~the placement of an individual with mental retardation in a state facility when placement is solely for the purpose of providing temporary care and support to an individual with mental retardation because of medical or other urgent conditions of the caretaking person providing care. The total number of days that respite or emergency care services, or both, are used is not to exceed 21 consecutive days or 75 days in a calendar year. Respite care services are not intended as a means of providing evaluations and program development services, nor are they intended to be used to obtain treatment of medical or behavioral problems or both.~~

## **12VAC35-200-20. Respite care admission.**

A. Applications for respite ~~care~~ in state facilities shall be processed through the case management CSB. A parent, guardian, or ~~legally~~ authorized representative seeking respite ~~care~~ services for an individual with mental retardation shall apply first to the CSB that serves the area where the ~~applicant individual, or if a minor, his parent, or guardian, or legally authorized representative~~ applicant individual, or if a minor, his parent, or guardian, or ~~legally authorized representative~~ is currently residing. If the ~~case management CSB determines that respite care services for the applicant individual are not available in the community, it~~

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# Regulations

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shall forward an application to the facility serving individuals with mental retardation from that geographic section of the state in which the applicant individual or his parent, or guardian, or ~~legally authorized representative~~ is currently residing.

The application shall include:

1. An application for services;
2. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;
3. A social history and current status;
4. A psychological evaluation that ~~has been performed in the past three years unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received reflects the individual's current functioning;~~
5. A current individualized education plan for school aged applicants individuals unless the facility director or designee determines that sufficient information as to the applicant's individual's abilities and needs is included in other reports received;
6. A vocational assessment for ~~adult applicants~~ adults unless the facility director or designee determines that sufficient information as to the applicant's individual's abilities and needs is included in other reports received;
7. A statement from the ~~ease management~~ CSB that respite ~~care~~ services for the applicant individual are not available in the community; ~~and~~
8. A statement from the ~~ease management~~ CSB that the appropriate arrangements ~~will be~~ are being made to return the individual to the CSB within the time frame required under this regulation; ~~and~~
9. A statement from the individual, a family member, or authorized representative specifically requesting services in the facility.

B. Determination of eligibility for respite ~~care~~ services shall be based upon the following criteria:

1. The applicant individual has a ~~primary~~ diagnosis of mental retardation and ~~functions on a level that~~ meets the facility's regular admission criteria;
2. The applicant's individual's needs for ~~care and supervision~~ are such that, in the event of a need for temporary care, respite ~~care~~ services would not be available in a less restrictive setting; and
3. The facility has appropriate resources to meet the ~~care and supervision~~ needs of the applicant individual.

~~Within a reasonable time of the receipt of the completed application~~ By the end of the next working day following receipt of a complete application package, the facility director, or his designee, shall provide written notice of his decision to the ~~ease management~~ CSB. This notice shall state the reasons for the decision.

If it is determined that the applicant individual is not eligible for respite ~~care~~, the person seeking respite ~~care~~ services may ask for reconsideration of the decision by submitting a written request for such reconsideration to the commissioner. Upon receipt of such request, the commissioner or designee shall notify the facility director and the facility director shall forward the application packet and related information to the commissioner or designee within 48 hours. The commissioner or designee shall ~~also~~ provide an opportunity for the person seeking respite ~~care~~ services to submit for consideration any additional information or reasons as to why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 10 days of the receipt of such request and notify all involved parties. The commissioner's decision shall be binding.

C. Respite ~~care~~ is shall be provided in state facilities under the following conditions:

1. The length of the respite ~~care~~ stay at the facility shall not exceed ~~21 consecutive days or a total of 75 days in a calendar year~~ the limits defined in §37.2-807 of the Code of Virginia;
- ~~2. Information on file at the facility is current;~~
- ~~3. 2.~~ Space and adequate staff coverage are available on a unit with an appropriate peer group for the applicant individual and suitable resources to meet his ~~care and supervision~~ needs; and
4. ~~3.~~ A physical examination performed by the facility's health service personnel at the time of the respite ~~care~~ admission has determined that the applicant's individual's health care needs can be met by the facility's resources during the scheduled respite ~~care~~ stay.

If for any reason a person admitted for respite ~~care~~ services is not discharged at the agreed upon time, the ~~ease management~~ CSB shall develop a an updated discharge plan as provided in ~~§§37.1-98 and 37.1-197.1~~ §§37.2-505 and 37.2-837 of the Code of Virginia.

Respite ~~care~~ shall not be used as a mechanism to circumvent the standard admissions procedures as provided in ~~§37.1-65.1~~ §37.2-806 of the Code of Virginia. No person who is admitted to a training center ~~in response to~~ under the provisions of this chapter shall, during the time of such respite ~~care~~ admission, be eligible for admission to any training center ~~in response to~~ §37.1-65.1 under §37.2-806 of the Code of Virginia.

**12VAC35-200-30. Emergency ~~care~~ admission.**

A. In the event of a ~~catastrophe~~ change in an individual's circumstances necessitating immediate, short-term care for an individual with mental retardation, emergency ~~care~~ admission may be requested by a parent, guardian, or ~~legally~~ authorized representative by calling the ~~case management~~ CSB. If the ~~case management~~ CSB determines that respite ~~care~~ services for the applicant individual are not available in the community, it may request an emergency admission to the facility serving that geographic area in which the applicant individual, or in case of a minor, his parent, or guardian, ~~or legally authorized representative~~ resides.

The ~~case management~~ CSB shall make every effort to obtain the same case information required for respite ~~care~~ admissions, as described in 12VAC35-200-20 A, before assuming responsibility for the care of the individual in need of emergency services. However, if the information is not available, this requirement may temporarily be waived if, and only if, arrangements have been made for receipt of the required information within 48 hours of the emergency ~~care~~ admission.

B. Acceptance for emergency ~~care admissions~~ admission shall be based upon the following criteria:

1. A ~~catastrophe~~ change in the individual's circumstances has occurred requiring immediate alternate arrangements to protect the individual's health and safety;
2. The individual has a ~~primary~~ diagnosis of mental retardation and ~~functions on a level that~~ meets the facility's regular admissions criteria;
3. All other alternate care resources in the community have been explored and found to be unavailable;
4. Space is available on a unit with appropriate resources to meet the individual's ~~care and supervision~~ needs;
5. The facility's health services personnel have determined that the individual's health care needs can be met by the facility's resources; and
6. The length of the emergency ~~care~~ stay at the facility will not exceed ~~21 consecutive days or a total of 75 days in a calendar year~~ the limits defined in §37.2-807 of the Code of Virginia.

C. Within 24 hours of receiving a request for emergency ~~care~~ admission, the facility director, or ~~his~~ designee, will inform the ~~case management~~ CSB whether the applicant individual is eligible for emergency ~~care~~ admission and whether the facility is able to provide emergency ~~care~~ services.

If the facility is able to provide emergency ~~care~~ services, arrangements shall be made to effect the admission as soon as possible.

If the facility is unable to provide emergency ~~care~~ services to an eligible applicant individual, the facility director or designee shall provide written notice of this determination to the ~~case management~~ CSB and may offer to try to obtain emergency ~~care~~ services from another appropriate facility.

If for any reason a person admitted to a facility for emergency ~~care~~ services is not discharged at the agreed upon time, the ~~case management~~ CSB shall develop a discharge plan as provided in ~~§§37.1-98 and 37.1-197.1~~ §§37.2-505 and 37.2-837 of the Code of Virginia.

VA.R. Doc. No. R07-134; Filed July 15, 2008, 12:56 p.m.

**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

**Final Regulation**

Title of Regulation: **18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-10, 18VAC65-20-15, 18VAC65-20-60, 18VAC65-20-120, 18VAC65-20-130, 18VAC65-20-153, 18VAC65-20-170, 18VAC65-20-240, 18VAC65-20-350, 18VAC65-20-420, 18VAC65-20-440, 18VAC65-20-500, 18VAC65-20-510, 18VAC65-20-590, 18VAC65-20-700; adding 18VAC65-20-171).**

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

Effective Date: September 3, 2008.

Agency Contact: Lisa Russell Hahn, 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 [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

Summary:

*The amendments specify the terminology and responsibilities for an establishment manager of record, revise the renewal schedule for establishments for consistency with other licenses, clarify the licensee's responsibility for compliance with continuing education, increase the requirement for retention of records from one year to three years, and streamline the requirement for a detailed embalming report.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.



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# Regulations

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## Part I General Provisions

### 18VAC65-20-10. Definitions.

Words and terms used in this chapter shall have the definitions ascribed in §54.1-2800 of the Code of Virginia or in 16 CFR Part 453, Funeral Industry Practices, of the Federal Trade Commission, which is incorporated by reference in this chapter. In addition, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Branch" or "chapel" means a funeral service establishment that is affiliated with a licensed main establishment and that conforms with the requirements of §54.1-2811 of the Code of Virginia.

"Courtesy card" means the card issued by the board which grants limited and restricted funeral service privileges in the Commonwealth to out-of-state funeral service licensees, funeral directors, and embalmers.

"Cremation urn" means a wood, metal, stone, plastic, or composition container or a container of other material, which is designed for encasing cremated ashes.

"Cremation vault" or "cremation outer burial container" means any container that is designed for encasement of an inner container or urn containing cremated ashes. Also known as a cremation box.

~~"Establishment manager" means a funeral service licensee or licensed funeral director designated as the manager of record who is responsible for the direct supervision and management of a funeral service establishment or branch facility.~~

"FTC" means the Federal Trade Commission.

"Manager of record" means a funeral service licensee or licensed funeral director who is responsible for the direct supervision and management of a funeral service establishment or branch facility.

### 18VAC65-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate. In accordance with §54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except with the concurrence of a committee of the board, are those that involve:

1. Intentional or negligent conduct that causes or is likely to cause injury;

2. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public;

3. Impairment with an inability to practice with skill and safety;

4. Inappropriate handling of dead human bodies;

5. Sexual misconduct;

6. Misappropriation of funds; ~~or~~

7. Aiding or abetting unauthorized practice; or

8. Felony conviction by an applicant.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

### 18VAC65-20-60. Accuracy of information.

A. All changes of mailing address, or name, ~~place of employment, or change in establishment ownership, manager, or name of a licensee or registrant~~ shall be furnished to the board within 30 days after the change occurs.

B. Any change in ownership or manager of record for an establishment shall be reported to the board within 14 days of the change.

~~B. C.~~ All notices required by law and by this chapter to be mailed by the board to any registrant or licensee shall be validly given when mailed to the latest address on file with the board and shall not relieve the licensee, funeral service intern, establishment, or firm of obligation to comply.

## Part II Renewals and Reinstatement

### 18VAC65-20-120. Expiration dates.

A. A funeral service establishment license, crematory registration, or surface transportation and removal service registration shall expire on ~~January~~ March 31 of each calendar year.

B. The funeral service license, funeral director license, or embalmer license shall expire on March 31 of each calendar year.

C. Courtesy cards expire on ~~December~~ March 31 of each calendar year.

### **18VAC65-20-130. Renewal of license; registration.**

A. A person, establishment, crematory, courtesy card holder or surface transportation and removal service that desires to renew its license or registration for the next year shall, not later than the expiration date as provided in 18VAC65-20-120, submit the renewal application and applicable fee.

1. In order to renew an active funeral service, director or embalmer license, a licensee shall be required to comply with continuing competency requirements set forth in 18VAC65-20-151.

2. The board shall not renew a license for any licensee who fails to attest to compliance with continuing competency requirements on the renewal form.

B. A person who or entity that desires to renew an expired license for up to one year following expiration shall comply with requirements of subsection A of this section and also submit the applicable fee for late renewal.

C. A person who or entity which fails to renew a license, registration, or courtesy card by the expiration dates prescribed in 18VAC65-20-120 shall be deemed to have an invalid license, registration, or courtesy card and continued practice may subject the licensee to disciplinary action by the board.

### **18VAC65-20-153. Documenting compliance with continuing education requirements.**

A. All licensees with active status are required to maintain original documentation for a period of two years after renewal.

B. After the end of each renewal period, the board may conduct a random audit of licensees to verify compliance with the requirement for that renewal period.

C. Upon request, a licensee shall provide documentation within 14 days as follows:

1. Official transcripts showing credit hours earned from an accredited institution; or
2. Certificates of completion from approved providers.

D. Compliance with continuing education requirements, including the subject and purpose of the courses as prescribed in 18VAC65-20-151 B, the maintenance of records and the relevance of the courses to the category of licensure is the responsibility of the licensee. The board may request additional information if such compliance is not clear from the transcripts or certificates.

E. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

## Part III

### Requirements for Licensure

### **18VAC65-20-170. Requirements for an establishment license.**

A. No person shall maintain, manage, or operate a funeral service establishment in the Commonwealth, unless such establishment holds a license issued by the board. The name of the funeral service licensee or licensed funeral director designated by the ownership to be manager of the establishment shall be included on the license.

B. Except as provided in §54.1-2810 of the Code of Virginia, every funeral service establishment and every branch or chapel of such establishment, regardless of how owned, shall have a separate establishment manager who is employed full time by the establishment for at least 40 hours a week of record who has responsibility for the establishment as prescribed in 18VAC65-20-171. The owner of the establishment shall not abridge the authority of the manager of record relating to compliance with the laws governing the practice of funeral services and regulations of the board.

C. At least 45 days prior to opening an establishment, an owner or licensed manager seeking an establishment license shall submit simultaneously a completed application, any additional documentation as may be required by the board to determine eligibility, and the applicable fee. An incomplete package will be returned to the licensee. A license shall not be issued until an inspection of the establishment has been completed and approved.

D. Within 30 days following a change of ownership, the owner or licensed manager shall notify the board, request a reinspection of the establishment, submit an application for a new establishment license with documentation that identifies the new owner, and pay the licensure and reinspection fees as required by 18VAC65-20-70. Reinspection of the establishment may occur on a schedule determined by the board, but shall occur no later than one year from the date of the change.

E. The application for licensure of a branch or chapel shall specify the name of the main establishment.

### **18VAC65-20-171. Responsibilities of the manager of record.**

A. The manager of record shall be employed full time by the establishment for at least 40 hours a week.

B. The manager shall be fully accountable for the operation of the establishment as it pertains to the laws and regulations governing the practice of funeral services, to include but not be limited to:

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# Regulations

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1. Maintenance of the facility within standards established in this chapter;

2. Retention of reports and documents as prescribed by the board in 18VAC65-20-700 during the period in which he serves as manager of record; and

3. Reporting to the board of any changes in information as required by 18VAC65-20-60.

## **18VAC65-20-240. Requirements for funeral service licensure by examination.**

### A. Application requirements.

1. With the exception of school transcripts and national examination board scores, all parts of an application package, including the required fee and any additional documentation as may be required to determine eligibility, shall be submitted simultaneously.

2. An individual applying for the state examination shall submit the application package ~~within six months and~~ not less than ~~45~~ 30 days prior to an examination date. The board may, for good cause shown by the applicant, waive the time for the filing of any application.

B. National examination requirements. Prior to applying for licensure by examination, every applicant shall pass the National Board Examination of the Conference of Funeral Service Examining Boards of the United States, Inc., administered in accredited schools of embalming or mortuary science.

C. State examination requirements. All applicants shall pass the Virginia State Board Examination.

## **18VAC65-20-350. Requirements for licensure by reciprocity or endorsement.**

A. Licenses for the practice of funeral service or its equivalent issued by other states, territories, or the District of Columbia may be recognized by the board and the holder of such license or licenses may be granted a license to practice funeral service within the Commonwealth, ~~as follows:~~

~~1. Reciprocity. Licenses may be granted by reciprocity provided that the same privileges are granted by the other jurisdiction to Virginia funeral service licensees by the establishment of substantially similar licensure requirements and reciprocity agreements between the two jurisdictions; or~~

~~2. Endorsement. Licenses may be granted to applicants by the board on a case-by-case basis if the applicant holds a valid license for the practice of funeral service or its equivalent in another state, territory, or the District of Columbia and possesses credentials which are substantially similar to or more stringent than required by the Commonwealth for initial licensure at the time the applicant was initially licensed.~~

B. An applicant for licensure by reciprocity or endorsement shall pass the Virginia State Board Examination.

## **18VAC65-20-420. Misrepresentation.**

A person employed or operating a surface transportation and removal service shall not in any manner misrepresent himself to the public as being an official of any local jurisdiction, the Commonwealth, federal, or any other governmental body unless granted such authority. This shall include the name and title of the company or service, uniforms, equipment, vehicles, and any other instruments used or proffered by the services or its agents. ~~The board shall be the sole determinant of the appropriateness of the pertinent qualities of the service and staff in enforcing this regulation.~~

### Part V

#### Issuance of Courtesy Cards

## **18VAC65-20-440. Courtesy cards.**

A. An out-of-state person applying for a courtesy card pursuant to §54.1-2801 B of the Code of Virginia shall hold a valid license for funeral service, funeral directing, or embalming in another state, territory, or the District of Columbia.

B. An applicant for a courtesy card shall submit:

1. A completed application and prescribed fee; and
2. Verification of a current funeral service license in good standing from the applicant's licensing authority.

C. The holder of a Virginia courtesy card shall only engage in the practice for which he is currently licensed in another jurisdiction.

### Part VI

#### Refusal, Suspension, Revocation, and Disciplinary Action

## **18VAC65-20-500. Disciplinary action.**

In accordance with the provisions of §54.1-2806 of the Code of Virginia, the following practices are considered unprofessional conduct and may subject the licensee to disciplinary action by the board:

1. Breach of confidence. The unnecessary or unwarranted disclosure of confidences by the funeral licensee.
2. Unfair competition.
  - a. Interference by a funeral service licensee, funeral director, or registered surface transportation and removal service when another has been called to take charge of a dead human body and the caller or agent of the caller has the legal right to the body's disposition.
  - b. Consent by a funeral service licensee or funeral director to take charge of a body unless authorized by the person or his agent having the legal right to disposition.
3. False advertising.

Part VII  
Standards for Embalming

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

Every funeral establishment shall record and maintain a separate, identifiable report ~~on a form as prescribed in Appendix IV of this chapter~~ for each embalming procedure conducted, which shall at a minimum include the following information:

1. The name of the deceased and the date of death;
2. The date and location of the embalming;
3. The name and signature of the embalmer and the Virginia license number of the embalmer; and
4. If the embalming was performed by a funeral service intern, the name and signature of the supervisor.

**18VAC65-20-590. Disposal of waste materials.**

Disposal of all waste materials shall be in conformity with local, state, and federal law and regulations to avoid contagion and the possible spread of disease. Upon inspection, the establishment shall provide evidence of compliance, such as a copy of a contract with a medical waste disposal company.

**18VAC65-20-700. Retention of documents.**

A. The following retention schedule shall apply ~~to retention of embalming reports, price lists, and itemized statements:~~

1. Price lists shall be retained for ~~one year~~ three years after the date on which they are no longer effective;
2. Itemized statements shall be retained for ~~one year~~ three years from the date on which the arrangements were made; and
3. Embalming reports shall be retained at the location of the embalming for ~~one year~~ three years after the date of the embalming;

B. The manager of record shall be responsible for retention and maintenance of all required documents.

~~4. C.~~ Documents shall be maintained on the premises of the funeral establishment and made available for inspection; ~~and~~

~~5. D.~~ In instances where the funeral establishment is sold, documents shall be transferred to the new owner, unless the existing firm is relocating to a new facility.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

a. No licensee or registrant shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly to be made, an advertisement of any sort regarding services or anything so offered to the public which contains any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading.

b. The following practices, both written and verbal, shall constitute false, deceptive, or misleading advertisement within the meaning of subdivision 4 of §54.1-2806 of the Code of Virginia:

- (1) Advertising containing inaccurate statements; and
- (2) Advertisement which gives a false impression as to ability, care, and cost of conducting a funeral, or that creates an impression of things not likely to be true.

c. The following practices are among those which shall constitute an untrue, deceptive, and misleading representation or statement of fact:

- (1) Representing that funeral goods or services will delay the natural decomposition of human remains for a long term or indefinite time; and
- (2) Representing that funeral goods have protective features or will protect the body from gravesite substances over or beyond that offered by the written warranty of the manufacturer.

4. Inappropriate handling of dead human bodies. Transportation and removal vehicles shall be of such nature as to eliminate exposure of the deceased to the public during transportation. During the transporting of a human body, consideration shall be taken to avoid unnecessary delays or stops during travel.

5. Failure to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies.

6. Conducting the practice of funeral services in such a manner as to constitute a danger to the health, safety, and well-being of the staff or the public.

7. Inability to practice with skill or safety because of physical, mental, or emotional illness, or substance abuse.

8. Failure to register as a supervisor for a funeral service intern or failure to provide reports to the board as required by the Code of Virginia and 18VAC65-40-320.

9. Failure to comply with applicable federal and state laws and regulations, including requirements for continuing education.

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# Regulations

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## [ FORMS

~~Application for a License to Practice Funeral Service Provider Application (rev. 6/06) 3/08).~~

~~Application for Courtesy Card (rev. 6/06) 7/08).~~

~~Funeral Service Establishment Application (rev. 3/08).~~

~~Notification of Change Application for New Establishment, Branch Establishment, Change of Location, Change of Ownership, Change of Trade Name, Change of Manager (rev. 6/06) 4/08).~~

~~Application for Waiver of Full-time Manager Requirement Application (rev. 6/06) 4/08).~~

~~Application for Crematory Registration Application (rev. 6/06) 4/08).~~

~~Application for Renewal for Waiver of Full-time Manager Requirement (rev. 12/02) 7/08).~~

~~Verification of State Licensure Form (rev. 12/02) 3/08).~~

~~Application for Surface Transportation and Removal Service Registration Application (rev. 6/06) 6/08).~~

~~Application for Approval as a Continuing Education Provider Application (eff. 6/06) (rev. 3/08).~~

~~Application for Reinstatement of Funeral Service License Provider (eff. 6/06) (rev. 4/08).~~

~~Application for Reinstatement of Funeral Service Establishment (eff. 3/08).~~

~~License Renewal Notice and Application, 0502, Funeral Service Providers (rev. 12/02).~~

~~License Renewal Notice and Application, 0501, Funeral Establishments (rev. 12/02).~~

~~License Renewal Notice and Application, 0506, Courtesy Card (rev. 12/02).~~

~~License Renewal Notice and Application, 0509, Surface Transportation (rev. 12/02).~~

~~License Renewal Notice and Application, 0510, Crematories (rev. 12/02).~~

~~Appendix I: General Price List (rev. 12/02).~~

~~Appendix II: Casket Price List; Outer Burial Container Price List (rev. 12/02).~~

~~Appendix III: Itemized Statement of Funeral Goods and Services Selected (rev. 12/02).~~

~~Appendix IV: Embalming Record (rev. 12/02): ]~~

VA.R. Doc. No. R06-91; Filed July 14, 2008, 3:04 p.m.

## Proposed Regulation

**Title of Regulation:** 18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-10, 18VAC65-20-60, 18VAC65-20-435; adding 18VAC65-20-436).

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

### Public Hearing Information:

September 9, 2008 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Suite 201, Conference Room 1, Richmond, Virginia

**Public Comments:** Public comments may be submitted until October 3, 2008.

**Agency Contact:** Lisa Russell Hahn, 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 [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

**Basis:** Chapter 24 (§54.1-2400 et seq.) of Title 54.1 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Funeral Directors and Embalmers to promulgate regulations, levy fees, administer a registration and renewal program, and discipline regulated professionals.

In addition to the general powers and duties of a health regulatory board, the Board of Funeral Directors and Embalmers has specific statutory authority to regulate funeral service establishments in §54.1-2803 of the Code of Virginia.

**Purpose:** As a result of the work of a Task Force on Cremation laws and regulations, the board has amended its regulations for the practice of funeral services to establish standards for crematories and the persons who operate them. While the board has authority to oversee and inspect crematories, it has not had regulatory standards by which to determine that a facility is not operating in a manner that ensures the integrity of the cremation process and protects those who may come in contact with dead human remains. The goal of the regulatory action is to establish some accountability for the facility, standards for clear identification of remains and authorization to cremate, acceptable and safe cremation practices, and appropriate training for operators to protect the health, safety and welfare of the consuming public.

**Substance:** The board has amended existing regulations to establish the following requirements in regulations governing crematories:

- Crematory to name a manager of record

- Training for operators of the crematory, including OSHA standards
- A funeral service licensee to obtain authorization to cremate and the content of an authorization form
- A method for positive identification of remains
- Maintenance of documentation
- Standards for proper storage of remains prior to cremation
- A permit to operate the crematory for agencies such as the Department of Environmental Quality
- Acceptable cremation practices, including prohibition on multiple cremations at one time
- A preclusion of the cremation of nonhuman remains in same retort
- Removal and disposal of radioactive devices and other nonbiological materials and devices
- Certification of crematory operators

The board is acting within its statutory authority to establish standards for the practice of funeral service, including cremation, and to determine the qualifications to enable any person to engage in the practice of funeral service and the operation of a funeral service establishment, including a crematory. Standards are necessary to ensure that there is a responsible party for the operation of the crematory and that operators are properly trained for the safe operation of the retort, including meeting OSHA and DEQ standards to protect the employees of the establishment but also persons in the community. Other requirements will ensure that cremation is not performed on the wrong remains or against the wishes of the next-of-kin. With additional regulatory standards, inspectors will be able to ensure cremation is practiced in a manner that respects the dignity of human remains, provides assurance to families, and protects the health and safety of those who may be affected by the practices of a crematory.

Issues: The primary advantage to the public would be greater assurance that a cremation would be handled properly, that human remains would not be mixed with nonhuman remains, that due diligence would be taken to ensure the correct remains are cremated, and that operators would be adequately trained and crematories accountable. There are no disadvantages because the cost of certifying operators (approx. \$500) should not increase the cost of cremations.

The primary advantage to the Commonwealth and the agency would be the establishment of standards by which a crematory can be judged. The board currently has statutory authority to inspect crematories but no regulatory standards

by which to base a finding or require a correction. There are no disadvantages to the agency.

## The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Funeral Directors and Embalmers (Board) proposes to amend existing regulatory sections in its regulations to:

- Require crematories to name a manager of record who will be responsible for ensuring that the crematory follows all relevant laws and regulations,
- Require that the Board receive written notification when a crematory changes mailing address or owner,
- Require all managers of record and crematory operators to become certified by the Cremation Association of North America (CANA), International Cemetery, Cremation and Funeral Association (ICCFA) or any other certification program that might, in the future, be recognized by the Board,
- Additionally, the Board proposes to add a new section to these regulations that would:
- Mandate that crematories obtain a signed authorization before cremation,
- Require remains to be transported in a container that is combustible, has a cover, is resistant to spillage or leakage and is rigid enough to support the weight enclosed in it,
- Require that identifying information be attached to any decedent awaiting cremation as well as to the outside of the cremation container,
- Require crematories to maintain all records of cremation for three years,
- Prohibit crematories from requiring remains to be placed in a casket before cremation or requiring that remains be placed in an urn,
- Require crematories to refrigerate remains if they are not to be cremated immediately upon receipt (unless remains have been embalmed) and
- Set acceptable cremation standards including prohibiting multiple decedents from being cremated at one time, in one retort, without specific written authorization and prohibiting cremation of non-human remains in the same retorts that are used to cremate human remains.

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

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# Regulations

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Estimated Economic Impact. Current regulations contain fairly minimal standards for registration of crematories. Currently, crematories all must be registered with the Board; crematories that offer services directly to the public must also be licensed as a funeral service establishment (or be a branch of a licensed funeral establishment) and are subject to Board discipline if human remains are inappropriately handled or if the law is broken.

The Board proposes to amend this section governing registration to require crematories to have a manager of record who will be responsible for making sure crematory practices do not break the law or requirements of these regulations. The Board also proposes to require (in this section) that managers of record and crematory operators achieve certification by either CANA, the ICCFA or any other group that may get Board approval in the future. The Department of Health Professions (DHP) reports that CANA charges \$495 for a short (weekend-long) certification class that teaches the material that is covered in the crematory operators test which costs \$175. DHP also reports that CANA will come into the state and hold classes at various locations (as demand dictates) and that some individuals in the state have already taken the certification class and, so, would only have to pass the exam to be certified. DHP does not know the exact costs for ICCFA certification but believes it is equivalent to that for the CANA program.

Initially, crematory operators and managers who have no previous training will likely incur costs for obtaining certification that include fees of approximately \$670 (\$495+\$175) plus any travel costs incurred to obtain training and the value of the time spent on training and taking the certification exam. Crematory operator and managers who have already taken a training class will likely only incur costs associated with taking the certification exam (\$175 fee plus the value of time spent studying for and taking the exam). Individuals who have obtained crematory operator certification can train others without obtaining any further credentials; so once funeral homes/crematories have certified individuals on staff, newly hired staff would be likely to receive training in-house. If this happens, costs for new certification would drop to exclude the (CANA, ICCFA) fee for training but would newly include the opportunity cost of staff time spent training. Funeral home/crematory staff who receive certification will benefit from training that concentrates on proper handling of remains and cremation processes as well as relevant laws because they will be less likely to run afoul of law enforcement or regulatory authorities. The public will likely benefit from certification requirements, and from the requirement that crematories have a manager of record, because crematory staff who are made aware of the law and expected standards, and who are held responsible for following those laws and standards, are less likely to mishandle decedents. Benefits likely outweigh costs for amendments to this regulatory section.

In addition to amending existing rules for registration of crematories, the Board proposes to add a new regulatory section to govern standards for cremation authorization, standards for cremation, handling human remains and recordkeeping. This new regulatory section consists mostly of requirements that are already expected minimal standards of practice for the industry/the law. To the extent that any crematories have not been following these standards, they will incur costs on account of these proposed regulations. Costs will vary according to what standards are not currently followed. Crematories that have not been keeping records, for instance, would incur costs for compiling required information and for storage. Any costs incurred by the regulated community may be offset by the benefit of increased clarity of rules under which they are supposed to operate. To the extent that these standards have not been followed, the public will benefit from having them explicitly promulgated into regulations because they will now have access to rules that, for instance, prohibit crematories from requiring the purchase of expensive caskets or urns. The Board will be better able to enforce these standards once they are explicitly written into regulation.

Businesses and Entities Affected. These proposed regulations will affect all funeral homes that operate crematory facilities, all independent crematories, managers of crematories and all crematory operators. DHP reports that there are 507 licensed funeral establishments and 76 registered crematories in the Commonwealth. DHP can not easily ascertain how many licensed funeral establishments also provide in-house crematory services, but it is likely that most of the 76 crematories registered with the Board fall into this category. Because crematory operators are not currently required to register with the Board, DHP does not have data that would indicate how many of these individuals currently work in the Commonwealth.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. Because certification requirements will slightly increase the cost of becoming a crematory operator, slightly fewer people are likely to pursue employment in this field. Given that long-run costs will be small (\$175 plus cost of time spent taking the certification test), this effect will likely be negligible.

Effects on the Use and Value of Private Property. To the extent that this regulatory action increases costs for funeral homes and crematories, this regulatory action may slightly decrease the value of these establishments. This effect may be partially or completely offset if this regulatory action increases public confidence in, and demand for, crematory services.

Small Businesses: Costs and Other Effects. DHP reports that 350 of the 507 funeral establishments that the Board licenses would qualify as small businesses. To the extent that these

establishments have not been following the standards that are being promulgated into regulations, they might incur costs. These costs will vary according to which standards will be newly implemented and might include bookkeeping and storage fees for record keeping, costs incurred in purchasing sturdier cremation containers, etc.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** There are likely no alternative methods to accomplish the Board's goal that would be less costly than the methods mandated by these proposed regulations.

**Real Estate Development Costs.** This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Funeral Directors and Embalmers concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC65-20, related to requirements for crematories.

Summary:

*The proposed amendments include standards for crematories that are registered or are a part of a licensed funeral establishment to include requirements for (i) a manager of record who is a certified crematory operator and who is responsible for compliance with state and federal rules for crematories; (ii) certification of all persons who operate a retort; (iii) due diligence in*

*the identification of the remains and authorization to cremate; (iv) safe and ethical operation of a crematory; (v) handling of human remains; and (vi) recordkeeping.*

Part I  
General Provisions

**18VAC65-20-10. Definitions.**

Words and terms used in this chapter shall have the definitions ascribed in §54.1-2800 of the Code of Virginia or in 16 CFR Part 453, Funeral Industry Practices, of the Federal Trade Commission, which is incorporated by reference in this chapter. In addition, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Branch" or "chapel" means a funeral service establishment that is affiliated with a licensed main establishment and that conforms with the requirements of §54.1-2811 of the Code of Virginia.

"Courtesy card" means the card issued by the board which grants limited and restricted funeral service privileges in the Commonwealth to out-of-state funeral service licensees, funeral directors, and embalmers.

"Cremation container" means a container in which human remains are transported to the crematory and placed in the retort for cremation.

"Cremation urn" means a wood, metal, stone, plastic, or composition container or a container of other material, which is designed for encasing cremated ashes.

"Cremation vault" or "cremation outer burial container" means any container that is designed for encasement of an inner container or urn containing cremated ashes. Also known as a cremation box.

"Establishment manager" means a funeral service licensee or licensed funeral director designated as the manager of record who is responsible for the direct supervision and management of a funeral service establishment or branch facility.

"FTC" means the Federal Trade Commission.

**18VAC65-20-60. Accuracy of information.**

A. All changes of mailing address, name, place of employment, or change in establishment or crematory ownership, manager, or name shall be furnished to the board within 30 days after the change occurs.

B. All notices required by law and by this chapter to be mailed by the board to any registrant or licensee shall be validly given when mailed to the latest address on file with the board and shall not relieve the licensee, funeral service intern, establishment, crematory, or firm of obligation to comply.



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# Regulations

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## **18VAC65-20-435. Registration of crematories.**

A. At least 30 days prior to opening a crematory, any person intending to own or operate a crematory shall apply for registration with the board by submitting a completed application and fee as prescribed in 18VAC65-20-70. The name of the individual designated by the ownership to be manager of record for the crematory shall be included on the application. The owner of the crematory shall not abridge the authority of the manager of record relating to compliance with the laws governing the practice of funeral services and regulations of the board.

B. Every crematory, regardless of how owned, shall have a manager of record who has achieved certification by the Cremation Association of North America (CANA), the International Cemetery, Cremation and Funeral Association (ICCF), or other certification recognized by the board and who has received training in compliance with requirements of the Occupational Health and Safety Administration (OSHA). Every manager of record registered by the board prior to (the effective date of this section) shall have one year from that date to obtain such certification.

C. The manager shall be fully accountable for the operation of the crematory as it pertains to the laws and regulations governing the practice of funeral services, to include but not be limited to:

1. Maintenance of the facility within standards established in this chapter;
2. Retention of reports and documents as prescribed by the board in 18VAC65-20-436 during the period in which he serves as manager of record; and
3. Reporting to the board of any changes in information as required by 18VAC65-20-60.

D. All persons who operate the retort in a crematory shall have certification by the Cremation Association of North America (CANA), the International Cemetery, Cremation and Funeral Association (ICCF), or other certification recognized by the board. Every operator in a crematory registered by the board prior to (the effective date of this section) shall have one year from that date to obtain such certification. Persons receiving training toward certification to operate a retort shall be allowed to work under the supervision of an operator who holds certification for a period not to exceed six months.

~~B. E.~~ A crematory providing cremation services directly to the public shall also be licensed as a funeral service establishment or shall be a branch of a licensed establishment.

~~C. F.~~ The board may take disciplinary action against a crematory registration for a violation of §54.1-2818.1 of the Code of Virginia or for the inappropriate handling of dead human bodies or cremains.

## **18VAC65-20-436. Standards for registered crematories or funeral establishments that operate a crematory.**

A. Authorization to cremate. In accordance with §54.1-2818.1 of the Code of Virginia, a crematory shall require a cremation authorization form executed in person or electronically in a manner that provides a copy of an original signature of the next-of-kin or the person designated pursuant to §54.1-2825 of the Code of Virginia. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. The identification attestation shall either be given on the cremation authorization form or on an identification form attached to the cremation authorization form.

B. Standards for cremation. The following standards shall be required for every crematory:

1. Every crematory shall provide evidence at the time of an inspection of a permit to operate issued by the Department of Environmental Quality (DEQ).
2. A crematory shall not knowingly cremate a body with a pacemaker, defibrillator or other potentially hazardous implant in place.
3. A crematory shall not cremate the human remains of more than one person simultaneously in the same retort, unless the crematory has received specific written authorization to do so from the person signing the cremation authorization form.
4. A crematory shall not cremate nonhuman remains in a retort permitted by DEQ for cremation of human remains.
5. Whenever a crematory is unable to cremate the remains immediately upon taking custody thereof, the crematory shall maintain the remains in refrigeration at 40 degrees Fahrenheit or less, unless the remains have been embalmed.

C. Handling of human remains.

1. Human remains shall be transported to a crematory in a cremation container and shall not be removed from the container unless the crematory has been provided with written instructions to the contrary by the person who signed the authorization form. A cremation container shall substantially meet all the following standards:
  - a. Be composed of readily combustible materials suitable for cremation;
  - b. Be able to be closed in order to provide complete covering for the human remains;
  - c. Be resistant to leakage or spillage; and
  - d. Be rigid enough for handling with ease.

2. No crematory shall require that human remains be placed in a casket before cremation nor shall it require that the cremains be placed in a cremation urn, cremation vault or receptacle designed to permanently encase the cremains after cremation. Cremated remains shall be placed in a plastic bag inside a rigid container provided by the crematory or by the next-of-kin for return to the funeral establishment or to the next-of-kin.

3. The identification of the decedent shall be physically attached to the remains and appropriate identification placed on the exterior of the cremation container. The crematory operator shall verify the identification on the remains with the identification attached to the cremation container and with the identification attached to the cremation authorization. The crematory operator shall also verify the identification of the cremains and place evidence of such verification in the cremation record.

D. Recordkeeping. A crematory shall maintain the records of cremation for a period of three years from the date of the cremation that indicate the name of the decedent, the date and time of the receipt of the body, and the date and time of the cremation and shall include:

1. The cremation authorization form signed by the person authorized by law to dispose of the remains and the form on which the next-of-kin or his designee has made a visual identification of the deceased;
2. The permission form from the medical examiner;
3. The DEQ permit number of the retort used for the cremation and the name of the retort operator; and
4. The form verifying the release of the cremains, including date and time of release, the name of the person and the entity to whom the cremains were released and the name of the decedent.

VA.R. Doc. No. R08-786; Filed July 14, 2008, 3:01 p.m.

**BOARD OF MEDICINE**

**Final Regulation**

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

**Titles of Regulations: 18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-225).**

**18VAC85-40. Regulations Governing the Practice of Respiratory Care Practitioners (amending 18VAC85-40-55).**

**18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-59).**

**18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-65).**

**18VAC85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited (amending 18VAC85-101-145).**

**18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists (amending 18VAC85-110-145).**

**18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18VAC85-120-85).**

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

Effective Date: September 3, 2008.

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:

*Chapter 674 of the 2008 Acts of Assembly amended §54.1-3801 of the Code of Virginia, which sets out exemptions for which the requirement for licensure in the healing arts does not apply. The legislation deleted the requirement that the volunteer, nonprofit organization have no paid employees and the requirement that it sponsor health care to populations of underserved people throughout the world. It also changed the requirement that the board be notified of the dates and location of services from 15 days to five business days in advance. The regulations are amended accordingly.*

**18VAC85-20-225. Registration for voluntary practice by out-of-state licenses.**

Any doctor of medicine, osteopathic medicine, podiatry or chiropractic who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of §54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization ~~with no paid employees~~ that sponsors the provision of health care to populations of underserved people ~~throughout the world~~ shall:

1. File a complete application for registration on a form provided by the board at least ~~15~~ five business days prior to engaging in such practice. An incomplete application will not be considered;

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# Regulations

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2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of §54.1-2901 of the Code of Virginia.

## **18VAC85-40-55. Registration for voluntary practice by out-of-state licensees.**

Any respiratory care practitioner who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of §54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization ~~with no paid employees~~ that sponsors the provision of health care to populations of underserved people ~~throughout the world~~ shall:

1. File a complete application for registration on a form provided by the board at least ~~45~~ five business days prior to engaging in such practice. An incomplete application will not be considered;
2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of §54.1-2901 of the Code of Virginia.

## **18VAC85-50-59. Registration for voluntary practice by out-of-state licensees.**

Any physician assistant who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of §54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization ~~with no paid employees~~ that sponsors the provision of health care to populations of underserved people ~~throughout the world~~ shall:

1. File a complete application for registration on a form provided by the board at least ~~45~~ five business days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of §54.1-2901 of the Code of Virginia.

## **18VAC85-80-65. Registration for voluntary practice by out-of-state licensees.**

Any occupational therapist who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of §54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization ~~with no paid employees~~ that sponsors the provision of health care to populations of underserved people ~~throughout the world~~ shall:

1. File a complete application for registration on a form provided by the board at least ~~45~~ five business days prior to engaging in such practice. An incomplete application will not be considered;
2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of §54.1-2901 of the Code of Virginia.

## **18VAC85-101-145. Registration for voluntary practice by out-of-state licensees.**

Any radiologic technologist or radiologic technologist-limited who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of §54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization ~~with no paid employees~~ that sponsors the provision of health care to populations of underserved people ~~throughout the world~~ shall:

1. File a complete application for registration on a form provided by the board at least ~~45~~ five business days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of §54.1-2901 of the Code of Virginia.

**18VAC85-110-145. Registration for voluntary practice by out-of-state licensees.**

Any licensed acupuncturist who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of §54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization ~~with no paid employees~~ that sponsors the provision of health care to populations of underserved people ~~throughout the world~~ shall:

1. File an application for registration on a form provided by the board at least ~~15~~ five business days prior to engaging in such practice;
2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of §54.1-2901 of the Code of Virginia.

**18VAC85-120-85. Registration for voluntary practice by out-of-state trainers.**

Any athletic trainer who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization ~~with no paid employees~~ that sponsors the provision of health care to populations of underserved people ~~throughout the world~~ shall:

1. File an application for registration on a form provided by the board at least ~~15~~ five business days prior to engaging in such practice;
2. Provide a complete record of professional certification or licensure in each state in which he has held a certificate or license and a copy of any current certificate or license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of §54.1-2901 of the Code of Virginia.

VA.R. Doc. No. R08-1259; Filed July 14, 2008, 2:58 p.m.

**BOARD OF NURSING**

**Final Regulation**

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-80, 18VAC90-30-160).**

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

Effective Date: September 3, 2008.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

*The amendments specify that a person must hold a current, unrestricted license as a registered nurse to hold a license and practice as a nurse practitioner.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

**18VAC90-30-80. Qualifications for initial licensure.**

A. An applicant for initial licensure as a nurse practitioner shall:

1. ~~Be currently licensed~~ Hold a current, active license as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse;
2. Submit evidence of a graduate degree in nursing or in the appropriate nurse practitioner specialty from an educational program designed to prepare nurse practitioners that is an approved program as defined in 18VAC90-30-10;
3. Submit evidence of professional certification that is consistent with the specialty area of the applicant's educational preparation issued by an agency accepted by the boards as identified in 18VAC90-30-90;
4. File the required application; and
5. Pay the application fee prescribed in 18VAC90-30-50.

B. Provisional licensure may be granted to an applicant who satisfies all requirements of this section with the exception of

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# Regulations

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subdivision A 3 of this section, provided the board has received evidence of the applicant's eligibility to sit for the certifying examination directly from the national certifying body. An applicant may practice with a provisional license for either six months from the date of issuance or until issuance of a permanent license or until he receives notice that he has failed the certifying examination, whichever occurs first.

## **18VAC90-30-160. Prohibited practice.**

Practice as a licensed nurse practitioner shall be prohibited if [ ~~1. The license has lapsed; or 2. The~~ the ] license as [ a nurse practitioner or ] a registered nurse is lapsed, inactive, revoked or suspended.

**NOTICE:** The forms used in administering the regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 1300, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

### [ FORMS

Instructions for Licensure -- Nurse Practitioner (rev. ~~10/02~~ 7/07).

Application for Licensure as a Nurse Practitioner (rev. ~~10/02~~ 7/07).

~~Renewal Notice and Application, Nurse Practitioner, 0024 (rev. 1/03).~~

Application for Reinstatement of License as a Nurse Practitioner (~~eff. 10/02~~) (rev. 7/07).

VA.R. Doc. No. R07-129; Filed July 14, 2008, 3:02 p.m.

## **BOARD OF PHYSICAL THERAPY**

### **Proposed Regulation**

**Title of Regulation:** **18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-10, 18VAC112-20-40, 18VAC112-20-50, 18VAC112-20-60, 18VAC112-20-65, 18VAC112-20-70, 18VAC112-20-90, 18VAC112-20-120, 18VAC112-20-131, 18VAC112-20-135, 18VAC112-20-136, 18VAC112-20-140, 18VAC112-20-150; adding 18VAC112-20-160, 18VAC112-20-170, 18VAC112-20-180, 18VAC112-20-190, 18VAC112-20-200).**

**Statutory Authority:** §§54.1-2400 and Chapter 34.1 (§54.1-3473 et seq.) of Title 54.1 of the Code of Virginia.

### **Public Hearing Information:**

August 22, 2008 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 200, Conference Room #1, Richmond, VA 23233-1463

**Public Comments:** Public comments may be submitted until 5 p.m. on October 3, 2008.

**Agency Contact:** Lisa R. Hahn, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4424, FAX (804) 527-4413, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

**Basis:** Chapter 24 (§54.1-2400 et seq.) of Title 54.1 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Physical Therapy to promulgate regulations, levy fees, and administer a licensure and renewal program. Chapter 34.1 (§54.1-3473 et seq.) of Title 54.1 of the Code of Virginia sets forth statutory provisions for the licensure and practice of physical therapists.

**Purpose:** The board's purpose is to update and clarify its regulations pursuant to recommendations from the Regulatory/Legislative Committee, which conducted a periodic review of regulations in accordance with Executive Order 36 (2006).

Questions from practitioners about the responsibility of physical therapists in discharge of a patient, in the role of patient evaluations, in medical recordkeeping and other issues relating to practice have been further specified in order to ensure that patients receive competent care. Additional requirements for persons applying for PT licensure by endorsement will help assure minimal competency in current knowledge and skills and will ensure that the Virginia board is fully informed about any disciplinary problems or malpractice payments.

The inclusion of standards of practice will further protect patient health and safety by setting rules for professional behavior in the protection of patient confidentiality, disclosure of records, patient communication, sexual contact and other issues that may impede patient care or result in patient harm. Standards set in regulations supplement those in the law and will provide the board with further grounds to discipline practitioners who violate such provisions.

**Substance:** The amendments add a definition for "discharge" and modified the definitions of "evaluation," "trainee," and "traineeship;" add acceptance of TOEFL iBT, the Internet-based tests of listening, reading, speaking and writing and to specify what evidence of English proficiency is acceptable in lieu of the required tests; eliminate the specific requirements for a "foreign-trained trainee" and refer to general requirements for a traineeship in 18VAC112-20-140; and clarify the "additional clinical training or course work in the deficiency areas of the examination" required for applicants who have failed the licensure examination three times. The language currently found in a guidance document will be incorporated into regulation.

Also, the board is concerned that it may not have sufficient documentation to ensure the competency of applicants

coming from other states, especially since the requirements for endorsement were changed to allow evidence of clinical practice for five years to replace the educational qualifications of applicants for licensure by examination. The board will require submission of reports on malpractice payments and actions taken by other boards or healthcare organizations and evidence of continuing education equivalent to that required in Virginia to ensure that the applicant has practiced safely and has maintained current knowledge and skills.

In addition, the requirements for an unlicensed graduate trainee will be amended in accordance with general traineeship requirements and to specify a limitation on the amount of time someone who has not passed the national examination can serve in a traineeship.

Provisions of 18VAC112-20-90, 18VAC112-20-100, and 18VAC112-20-120 are amended to clarify practice questions and issues that have come to the attention of the board. The board has clarified the role of the physical therapist in evaluations and discharges.

The amendments also add documentation of completion of a transitional doctoral program as evidence of satisfying continued competency requirements and has clarified that the exemption for persons in their first renewal following initial licensure is for licensure by examination; distinguish between a licensee whose license has lapsed for less than two years, who may reinstate by meeting the renewal requirements and payment of a late fee, and the licensee whose license is lapsed for more than two years who must reinstate by completion of a traineeship or evidence of practice in another jurisdiction; make 18VAC112-20-140 applicable to all references to traineeship with other sections of the regulation amended accordingly; and provide for a fee for reinstatement of a suspended license.

The amendments also add regulations specifying standards of practice and grounds for unprofessional conduct. Section 54.1-3483 of the Code of Virginia provides grounds for unprofessional conduct by a physical therapist or a physical therapist assistant, including conducting one's practice in such a manner as to be a danger to the health and welfare of his patients or to the public. The board has determined that it needs to establish in regulation requirements for practice that may provide greater protection for the health and welfare of patients, relating to confidentiality and maintenance of patient records, informed consent, termination of care, and responsibility for performance of procedures within one's skill and scope of practice. Sections 18VAC112-20-160 through 18VAC112-20-200 are taken from the standards of conduct regulations under the Board of Medicine, as applicable to occupational therapists, physician assistants, radiologic technologists and other professionals.

Issues: The primary advantage to the public would be to provide greater specificity about the responsibility of the physical therapist in the evaluation and discharge of a patient and in the standards by which a practitioner should guide his practice and interactions with patients. There are no advantages or disadvantages to the agency or the Commonwealth. There is no other pertinent matter of interest related to this action.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Physical Therapy (Board) proposes to amend its regulations as a part of the periodic review process. The Board proposes to:

- 1) Add several definitions to the regulatory text,
- 2) Clarify that applicants educated outside of the United States (or Canada) can take the internet version of Test of English as a Foreign Language (TOEFL iBT) to prove English proficiency,
- 3) Clarify what remediation is required of applicants for licensure who have failed the national exam three times,
- 4) Require applicants for licensure by endorsement to provide current reports from both the Healthcare Integrity and Protection Data Bank (HIPDB) and the National Practitioner Data Bank (NPDB),
- 5) Require applicants for licensure by endorsement to provide proof of continuing education,
- 6) Modify the active practice requirement for applicants for licensure by endorsement so that 320 hours of active practice are required within the four years immediately preceding the filing of an application,
- 7) Limit, to one year, the length of time an unlicensed graduate may work in a traineeship after failing the national licensure exam and while awaiting re-examination,
- 8) Allow graduation from a transitional Doctor of Physical Therapy program to satisfy continuing educational requirements for the biennium in which the degree is awarded,
- 9) Clarify that a licensee who fails to renew his license on time, but who seeks license reinstatement within two years of the date of license expiration, to reinstate his license by paying a renewal and late fee and providing proof of continuing education for the biennium before his license lapsed and for the period after that but before application for reinstatement,
- 10) Add a \$500 fee for reinstatement of a suspended license and

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# Regulations

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## 11) Add explicit standards of conduct.

**Result of Analysis.** The benefits likely exceed the costs for most of these proposed changes. There is insufficient data to measure the magnitude of costs versus benefits for continuing education that will be required of applicants for licensure by endorsement.

**Estimated Economic Impact.** Some of the amendments that the Board proposes to make to these regulations will likely have no significant economic impact. The Board proposes to add several definitions to the regulatory text, for example, that will provide the benefit of added clarity for individuals who are reading these regulations. Adding these definitions, however, will not increase (or lower) costs for entities that are subject to Board regulations in any substantial way. From the numbered list in the Summary of Changes above, proposed amendments 1, 2, 3, 9 and 11 fall into this category. Analysis of other changes is below.

Currently, the section of these regulations that govern licensure by endorsement requires applicants to hold a current, unrestricted license in another political jurisdiction (within the United States, its territories, the District of Columbia or Canada) and to meet the same educational requirements as applicants for licensure by examination. Alternately, these applicants may provide proof that they hold a current, unrestricted license and that they have worked at an active, clinical practice during the five years immediately preceding application. Applicants for licensure by endorsement must also provide documentation that they have passed an exam that is equivalent to the Virginia exam or that they have passed the exam required by the political jurisdiction that issued their license and that they have worked at an active, clinical practice during the five years immediately preceding application. Currently, physical therapists who are applying for licensure by endorsement, but who have not actively practiced at least 160 hours in the last two years, must successfully complete a traineeship before they can be licensed.

The Board proposes to amend the conditions under which a traineeship would be required of applicants for licensure by endorsement so that individuals who have not actively practiced at least 320 hours in the last four years (rather than 160 in two years) must complete a traineeship before they can be licensed. The Department of Health Professions (DHP) reports that this amendment will better accommodate individuals who have taken a leave of absence to raise children (or for other reasons) and are reentering the field of physical therapy through this licensure program.

The Board also proposes to amend this section to require applicants for licensure by endorsement to submit current HIPDB and the NPDB reports. State Boards and insurance companies are required, by federal law, to report any instances of Board discipline and/or malpractice to these data banks. Requiring applicants to provide these reports will

likely reduce the chance of someone gaining licensure who does not meet the Commonwealth's standards for competency and character. Applicants can obtain both of these reports for \$16 so the cost of this requirement is unlikely to affect an otherwise qualified therapist's decision to apply for Virginia licensure.

Additionally, the Board proposes to require applicants for licensure by endorsement to provide proof of 15 hours continuing education for each year of licensure in another political jurisdiction or 60 hours of continuing education over the four years preceding application for Virginia licensure. DHP reports that this change is proposed to ensure that individuals who are licensed by endorsement have had the same level of training as individuals who are already practicing in the state (physical therapist licensed in the Commonwealth must complete 30 hours of continuing education per biennium for license renewal). DHP also reports that the annual explicit cost of continuing education can range from costing nothing (for members of professional organizations or for licensees who can take advantage of free in-service training) to several hundred dollars (for licensees who fulfill continuing education requirements with for-fee conferences). All individuals who are subject to continuing education requirements incur implicit cost for their time spent on training. Using Bureau of Labor Statistics (BLS) data for the (2006) average hourly wage for a physical therapist (\$32.72 p/h), these individuals could incur implicit costs equal to as much as \$1,963.<sup>1</sup> The opportunity cost for hours spent on continuing education could be lower or higher than this depending on how individuals value alternate uses of their time. Individuals who want to apply for licensure by endorsement, but who have either had fewer continuing education hours to complete or who have not been subject to continuing education requirements at all where they are currently licensed, will have to complete up to 60 hours of training before they can be licensed. This may affect these individuals' willingness to be licensed in Virginia and, so may mean that slightly fewer of these individuals end up working as physical therapists in the Commonwealth.

Current regulations contain a fairly generous list of approved continuing education. The Board proposes to add to this list by allowing graduation from a transitional Doctor of Physical Therapy program to satisfy continuing educational requirements for the biennium in which the degree is awarded. This change will benefit licensees by allowing them one more continuing education choice.

Current regulations allow unlicensed graduates to work as physical therapy trainees while they are awaiting their scores on the national examination. Traineeships must be terminated within two days of trainees receiving their exam scores; trainees who do not pass the exam may apply for a new traineeship which would last until they retake the exam and get their new results.

The Board proposes to only allow any traineeship that is approved after exam failure to last one year from the date the results of the first exam arrive. DHP reports that this change is proposed to ensure that individuals who have completed their initial education become licensed in a timely manner. The national exam is computerized and is given on demand six days a week. Given that individuals who fail the exam initially can avail themselves of multiple opportunities to retake the exam during the time period specified by the Board, this requirement is unlikely to significantly lower the number of individuals who are licensed by examination in any given year.

Finally, current regulation specifies a normal reinstatement fee of \$180 and a fee for reinstatement of a revoked license (\$1,000) but does not specifically address reinstatement of suspended licenses. This means that individuals who have had their license suspended, and who have to undergo an investigation and have the Board reinstate them, pay the same \$180 as someone who just let their license lapse for more than two years.

To help defray the cost of this process, the Board proposes to add a \$500 fee for reinstatement of a suspended license to the fee schedule. This change will increase the cost of reinstatement for individuals who have had their licenses suspended from \$180 to \$500.

**Businesses and Entities Affected.** DHP reports that there are 4,757 physical therapists and 1,849 physical therapist assistants who are licensed by the Commonwealth. DHP also reports that 351 individuals were newly licensed during the last fiscal year. All of these individuals will be affected by these regulatory changes.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory action.

**Projected Impact on Employment.** This regulatory action will likely have little to no impact on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

**Small Businesses: Costs and Other Effects.** DHP reports that some of the 4,757 physical therapists who are licensed by the Commonwealth may meet the definition of a small business. Physical therapists who are already licensed in the state, and who count as proprietors of small businesses, will incur some extra cost for license reinstatement if they break the law and have their licenses suspended. Out-of-state small business physical therapists who are applying for licensure by endorsement may incur extra costs due to continuing education requirements added by the Board.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** There are likely no alternatives to this

regulatory action that both meet the aims of the Board and would further lower costs for small businesses in the Commonwealth.

**Real Estate Development Costs.** This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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<sup>1</sup> 60\*32.72=1,963.20

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Physical Therapy concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC112-20, Regulations Governing the Practice of Physical Therapy, relating to recommendations from its periodic review.

Summary:

*The proposed amendments clarify certain definitions and requirements for practice by physical therapists, simplify regulations for trainees, specify the additional training or course work required to retake the examination after three failures, add evidence of competency for licensure by endorsement, clarify the responsibilities of a physical therapist in the evaluation and discharge of a patient, modify the requirements for renewal or reinstatement of licensure, and add provisions on standards of*



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# Regulations

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*professional practice and grounds for unprofessional conduct.*

## Part I General Provisions

### 18VAC112-20-10. Definitions.

In addition to the words and terms defined in §54.1-3473 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:

"Active practice" means a minimum of 160 hours of professional practice as a physical therapist or physical therapist assistant within the 24-month period immediately preceding renewal. Active practice may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Approved program" means an educational program accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association.

"CLEP" means the College Level Examination Program.

"Contact hour" means 60 minutes of time spent in continuing learning activity exclusive of breaks, meals or vendor exhibits.

"Direct supervision" means a physical therapist or a physical therapist assistant is physically present and immediately available and is fully responsible for the physical therapy tasks or activities being performed.

"Discharge" means the discontinuation of interventions in a single episode of care that have been provided in an unbroken sequence and related to the physical therapy interventions for a given condition or problem.

~~"Evaluation" means the examination, assessment or screening of a patient~~ a process in which the physical therapist makes clinical judgments based on data gathered during an examination in order to plan and implement a treatment intervention, provide preventive care, reduce risks of injury and impairment, or provide for consultation.

"Face-to-face" means learning activities or courses obtained in a group setting or through interactive, real-time technology.

"FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

"General supervision" means a physical therapist shall be available for consultation.

"National examination" means the examinations developed and administered by the Federation of State Boards of Physical Therapy and approved by the board for licensure as a physical therapist or physical therapist assistant.

"Support personnel" means a person who is performing designated routine tasks related to physical therapy under the direction and supervision of a physical therapist or physical therapist assistant within the scope of this chapter.

"TOEFL" means the Test of English as a Foreign Language.

"Trainee" means a person seeking licensure as a physical therapist or physical therapist assistant who is undergoing a traineeship.

~~1. "Foreign educated trainee" means a physical therapist or physical therapist assistant who was educated outside the United States and did not graduate from an approved program and who is seeking licensure to practice in Virginia.~~

~~2. "Inactive practice trainee" means a physical therapist or physical therapist assistant who has previously been licensed and has not practiced for at least 320 hours within the past four years and who is seeking licensure or relicensure in Virginia.~~

~~3. "Unlicensed graduate trainee" means a graduate of an approved physical therapist or physical therapist assistant program who has not taken the national examination or who has taken the examination but not yet received a license from the board.~~

"Traineeship" means a period of active clinical practice during which an unlicensed applicant for licensure as a physical therapist or physical therapist assistant works under the direct supervision of a physical therapist approved by the board.

"TSE" means the Test of Spoken English.

"Type 1" means face-to face continuing learning activities offered by an approved organization as specified in 18VAC112-20-131.

"Type 2" means continuing learning activities which may or may not be offered by an approved organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning.

### 18VAC112-20-40. Education requirements: graduates of approved programs.

A. An applicant for licensure who is a graduate of an approved program shall submit documented evidence of his graduation from such a program with the required application and fee.

B. If an applicant is a graduate of an approved program located outside of the United States or Canada, he shall provide proof of proficiency in the English language by passing TOEFL and TSE or the TOEFL iBT, the Internet-based tests of listening, reading, speaking and writing by a score determined by the board or an equivalent examination approved by the board. TOEFL iBT or TOEFL and TSE may

be waived upon evidence of ~~English proficiency that the applicant's physical therapist assistant program was taught in English or that the native tongue of the applicant's nationality is English.~~

**18VAC112-20-50. Education requirements: graduates of schools not approved by an accrediting agency approved by the board.**

A. An applicant for initial licensure as a physical therapist who is a graduate of a school not approved by an accrediting agency approved by the board shall submit the required application and fee and provide documentation of the physical therapist's certification by a report from the FCCPT or of the physical therapist eligibility for licensure as verified by a report from any other credentialing agency approved by the board that substantiates that the physical therapist has been evaluated in accordance with requirements of subsection B of this section.

B. The board shall only approve a credentialing agency that:

1. Utilizes the Coursework Evaluation Tool for Foreign Educated Physical Therapists of the Federation of State Boards of Physical Therapy and utilizes original source documents to establish substantial equivalency to an approved physical therapy program;

2. Conducts a review of any license or registration held by the physical therapist in any country or jurisdiction to ensure that the license or registration is current and unrestricted or was unrestricted at the time it expired or was lapsed; and

3. Verifies English language proficiency by passage of the TOEFL and TSE examination or the TOEFL iBT, the Internet-based tests of listening, reading, speaking and writing or by review of ~~other evidence of English proficiency that the applicant's physical therapy program was taught in English or that the native tongue of the applicant's nationality is English.~~

C. An applicant for licensure as a physical therapist assistant who is a graduate of a school not approved by the board shall submit with the required application and fee the following:

1. Proof of proficiency in the English language by passing TOEFL and TSE or the TOEFL iBT, the Internet-based tests of listening, reading, speaking and writing by a score determined by the board or an equivalent examination approved by the board. ~~TOEFL iBT or TOEFL and TSE may be waived upon evidence of English proficiency that the applicant's physical therapist assistant program was taught in English or that the native tongue of the applicant's nationality is English.~~

2. A copy of the original certificate or diploma that has been certified as a true copy of the original by a notary public, verifying his graduation from a physical therapy

curriculum. If the certificate or diploma is not in the English language, submit either:

a. An English translation of such certificate or diploma by a qualified translator other than the applicant; or

b. An official certification in English from the school attesting to the applicant's attendance and graduation date.

3. Verification of the equivalency of the applicant's education to the educational requirements of an approved program for physical therapist assistants from a scholastic credentials service approved by the board.

D. An applicant for initial licensure as a physical therapist or a physical therapist assistant who is not a graduate of an approved program shall also submit verification of having successfully completed a full-time 1,000-hour traineeship ~~as a "foreign educated trainee"~~ under the direct supervision of a licensed physical therapist.

~~1. The traineeship shall be in a facility that serves as an education facility for students enrolled in an accredited program educating physical therapists in Virginia and is approved by the board~~ accordance with requirements in 18VAC112-20-140.

~~1. It shall be the responsibility of the foreign educated trainee to make the necessary arrangements for his training with the director of physical therapy or the director's designee at the facility selected by the trainee.~~

~~2. The physical therapist supervising the foreign educated trainee shall submit a completed physical therapy or physical therapist assistant clinical performance instrument approved by the board.~~

~~3. If the traineeship is not successfully completed, the president of the board or his designee shall determine if a new traineeship shall commence. If it is determined by the board that a new traineeship shall not commence, then the application for licensure shall be denied.~~

~~4. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as determined by the supervising physical therapist, then the application for licensure shall be denied.~~

~~5. 2.~~ The traineeship requirements of this part may be waived if the applicant for a license can verify, in writing, the successful completion of one year of clinical physical therapy practice as a licensed physical therapist or physical therapist assistant in the United States, its territories, the District of Columbia, or Canada, equivalent to the requirements of this chapter.

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# Regulations

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## **18VAC112-20-60. Requirements for licensure by examination.**

A. Every applicant for initial licensure by examination shall submit:

1. Documentation of having met the educational requirements specified in 18VAC112-20-40 or 18VAC112-20-50;
2. The required application, fees and credentials to the board; and
3. Documentation of passage of the national examination as prescribed by the board.

B. If an applicant fails the national examination three times, he shall apply for approval to sit for any subsequent examination by submission of evidence satisfactory to the board of having successfully completed ~~additional clinical training or course work in the deficiency areas of the examination~~ the following requirements:

1. Provide the board with a copy of the deficiency report from the examination;
2. Review areas of deficiency with the applicant's physical therapy educational program and develop a plan, which may include additional clinical training or coursework, to address deficiency areas; and
3. Take an examination review course and the practice examination.

## **18VAC112-20-65. Requirements for licensure by endorsement.**

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18VAC112-20-40 or 18VAC112-20-50. In lieu of meeting such requirements, an applicant may provide evidence of clinical practice during the five years immediately preceding application for licensure in Virginia with a current, unrestricted license issued by another U.S. jurisdiction;
2. The required application, fees, and credentials to the board; ~~and~~
3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner Data Bank (NPDB);
4. Evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another U.S. jurisdiction, or 60 hours obtained within the past four years; and

~~3-~~ 5. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state at the time of initial licensure in that state and active, clinical practice with a current, unrestricted license for at least five years prior to applying for licensure in Virginia.

For the purpose of this subsection, active, clinical practice shall mean at least 2,500 hours of patient care over a five-year period.

C. A physical therapist or physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy for at least ~~460~~ 320 hours within the ~~two~~ four years immediately preceding his application for licensure shall first successfully complete ~~a 480-hour~~ 480 hours in a traineeship as specified by subsection B of in accordance with requirements in 18VAC112-20-140.

## **18VAC112-20-70. Traineeship for unlicensed graduate scheduled to sit for the national examination.**

A. Upon approval of the president of the board or his designee, an unlicensed graduate ~~trainee in Virginia~~ may be employed as a trainee under the direct supervision of a licensed physical therapist until the results of the national examination are received.

B. The traineeship, which shall be in accordance with requirements in 18VAC112-20-140, shall terminate two working days following receipt by the candidate of the licensure examination results.

C. The unlicensed graduate may reapply for a new traineeship while awaiting to take the next examination. A new traineeship shall not be approved for more than one year following the receipt of the first examination results.

## **18VAC112-20-90. General responsibilities.**

A. The physical therapist shall be responsible for managing all aspects of the physical therapy care of each patient and shall provide:

1. The initial evaluation for each patient and its documentation in the patient record; and
2. Periodic evaluations prior to patient discharge, including documentation of the patient's response to therapeutic intervention.
3. The documented discharge of the patient, including the response to therapeutic intervention at the time of discharge.

B. The physical therapist shall communicate the overall plan of care to the patient or his legally authorized representative and shall also communicate with a referring doctor of medicine, osteopathy, chiropractic, podiatry, or dental

surgery, nurse practitioner or physician assistant to the extent required by §54.1-3482 of the Code of Virginia.

C. A physical therapist assistant may assist the physical therapist in performing selected components of physical therapy intervention to include treatment, measurement and data collection, but not to include the performance of an evaluation as defined in 18VAC112-20-10.

D. A physical therapist assistant's visits to a patient may be made under general supervision.

**18VAC112-20-120. Responsibilities to patients.**

A. The initial patient visit shall be made by the physical therapist for evaluation of the patient and establishment of a plan of care.

B. The physical therapist assistant's first visit with the patient shall only be made after verbal or written communication with the physical therapist regarding patient status and plan of care. Documentation of such communication shall be made in the patient's record.

C. Documentation of physical therapy interventions shall be recorded on a patient's record by the physical therapist or physical therapist assistant providing the care.

D. The physical therapist shall reevaluate the patient as needed, but not less than according to the following schedules:

1. For inpatients in hospitals as defined in §32.1-123 of the Code of Virginia, it shall be not less than once every seven consecutive days.
2. For patients in other settings, it shall be not less than one of 12 visits made to the patient during a 30-day period, or once every 30 days from the last evaluation, whichever occurs first.

Failure to abide by this subsection due to the absence of the physical therapist in case of illness, vacation, or professional meeting, for a period not to exceed five consecutive days, will not constitute a violation of these provisions.

E. The physical therapist shall be responsible for ongoing involvement in the care of the patient to include regular communication with a physical therapist assistant regarding the patient's plan of treatment.

**18VAC112-20-131. Continued competency requirements for renewal of an active license.**

A. In order to renew an active license biennially ~~after December 31, 2003~~, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall consider the following: (i) the need to promote ethical practice, (ii) an

appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of the following:

1. A minimum of 15 of the contact hours required for physical therapists and 10 of the contact hours required for physical therapist assistants shall be in Type 1 face-to-face courses. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

- a. The Virginia Physical Therapy Association;
- b. The American Physical Therapy Association;
- c. Local, state or federal government agencies;
- d. Regionally accredited colleges and universities;
- e. Health care organizations accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO);
- f. The American Medical Association - Category I Continuing Medical Education course; and
- g. The National Athletic Trainers Association.

2. No more than 15 of the contact hours required for physical therapists and 20 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization but which shall be related to the clinical practice of physical therapy. Type 2 activities may include but not be limited to consultation with colleagues, independent study, and research or writing on subjects related to practice.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

4. Documentation of graduation from a transitional doctor of physical therapy program may be provided as evidence of completion of continuing competency requirements for the biennium in which the physical therapist was awarded the degree.

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal

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# Regulations

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following the date of initial licensure by examination in Virginia.

D. The licensee shall retain his records on the completed form with all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

## **18VAC112-20-135. Inactive license.**

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required renewal fee of \$70 for a physical therapist and \$35 for a physical therapist assistant, be issued an inactive license. ~~From January 1, 2006, through December 31, 2006, the inactive renewal fee shall be \$30 for a physical therapist and \$15 for a physical therapist assistant.~~

1. The holder of an inactive license shall not be required to meet active practice requirements.

2. An inactive licensee shall not be entitled to perform any act requiring a license to practice physical therapy in Virginia.

B. A physical therapist or physical therapist assistant who holds an inactive license may reactivate his license by:

1. Paying the difference between the renewal fee for an inactive license and that of an active license for the biennium in which the license is being reactivated; and

2. Providing proof of:

a. Active practice hours in another jurisdiction equal to those required for renewal of an active license in Virginia for the period in which the license has been inactive. If the inactive licensee does not meet the requirement for active practice, the license may be reactivated by ~~meeting~~ the completing 480 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140; and

b. Completion of the number of continuing competency hours required for the period in which the license has been inactive, not to exceed four years.

## **18VAC112-20-136. Reinstatement requirements.**

A. A physical therapist or physical therapist assistant whose Virginia license is lapsed for two years or less may reinstate his license by payment of the renewal and late fees as set forth in 18VAC112-20-150 and completion of continued competency requirements as set forth in 18VAC112-20-131.

B. A physical therapist or physical therapist assistant whose Virginia license is lapsed for more than two years and who is seeking reinstatement shall:

1. Practice physical therapy in another jurisdiction for at least 320 hours within the four years immediately preceding applying for reinstatement or successfully complete 480 hours ~~as an inactive practice trainee~~ as specified in 18VAC112-20-140; and

2. Complete the number of continuing competency hours required for the period in which the license has been lapsed, not to exceed four years.

## **18VAC112-20-140. Traineeship ~~required~~ requirements.**

~~The 480 hours of~~ traineeship shall be in a facility that (i) serves as a clinical education facility for students enrolled in an accredited program educating physical therapists in Virginia, (ii) is approved by the board, and (iii) is under the direction and supervision of a licensed physical therapist.

1. The physical therapist supervising the inactive practice trainee shall submit a report to the board at the end of the 480 required number of hours on forms supplied by the board.

2. If the traineeship is not successfully completed at the end of the 480 required hours, as determined by the supervising physical therapist, the president of the board or his designee shall determine if a new traineeship shall commence. If the president of the board determines that a new traineeship shall not commence, then the application for licensure shall be denied.

3. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as determined by the supervising physical therapist, then the application for licensure shall be denied.

## **18VAC112-20-150. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Licensure by examination.

1. The application fee shall be \$140 for a physical therapist and \$100 for a physical therapist assistant.

2. The fees for taking all required examinations shall be paid directly to the examination services.

C. Licensure by endorsement. The fee for licensure by endorsement shall be \$140 for a physical therapist and \$100 for a physical therapist assistant.

D. Licensure renewal and reinstatement.

1. The fee for active license renewal for a physical therapist shall be \$135 and for a physical therapist assistant shall be \$70 and shall be due by December 31 in each even-numbered year. ~~From January 1, 2006, through December 31, 2006, the fee for active license renewal fee shall be \$60 for a physical therapist and \$30 for a physical therapist assistant.~~

2. A fee of \$25 for a physical therapist assistant and \$50 for a physical therapist for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.

3. The fee for reinstatement of a license that has expired for two or more years shall be \$180 for a physical therapist and \$120 for a physical therapist assistant and shall be submitted with an application for licensure reinstatement.

E. Other fees.

1. The fee for an application for reinstatement of a license that has been revoked shall be \$1,000; the fee for an application for reinstatement of a license that has been suspended shall be \$500.

2. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.

3. The fee for a returned check shall be \$35.

4. The fee for a letter of good standing/verification to another jurisdiction shall be \$10.

## Part IV Standards of Practice

### **18VAC112-20-160. Requirements for patient records.**

A. Practitioners shall comply with provisions of §32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records.

B. Practitioners shall provide patient records to another practitioner or to the patient or his personal representative in a timely manner in accordance with provisions of §32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage and keep timely, accurate, legible and complete patient records.

D. Practitioners who are employed by a health care institution, school system or other entity, in which the individual practitioner does not own or maintain his own records, shall maintain patient records in accordance with the policies and procedures of the employing entity.

E. Practitioners who are self-employed or employed by an entity in which the individual practitioner does own and is responsible for patient records shall:

1. Maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

a. Records of a minor child shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

b. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or

c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

2. From (six months from the effective date of the regulation), post information or in some manner inform all patients concerning the time frame for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality, such as by incineration or shredding.

F. When a practitioner is closing, selling or relocating his practice, he shall meet the requirements of §54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the patient's choice or provided to the patient.

### **18VAC112-20-170. Confidentiality and practitioner-patient communication.**

A. A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

B. Communication with patients.

1. Except as provided in §32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately present information to a patient or his legally authorized representative in understandable terms and encourage participation in decisions regarding the patient's care.

2. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a treatment or procedure provided

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# Regulations

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or directed by the practitioner in the treatment of any disease or condition.

3. Before any invasive procedure is performed, informed consent shall be obtained from the patient and documented in accordance with the policies of the health care entity. Practitioners shall inform patients of the risks, benefits, and alternatives of the recommended invasive procedure that a reasonably prudent practitioner in similar practice in Virginia would tell a patient. In the instance of a minor or a patient who is incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.

4. Practitioners shall adhere to requirements of §32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as subjects in human research with the exception of retrospective chart reviews.

## C. Termination of the practitioner/patient relationship.

1. The practitioner or the patient may terminate the relationship. In either case, the practitioner shall make the patient record available, except in situations where denial of access is allowed by law.

2. A practitioner shall not terminate the relationship or make his services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

## **18VAC112-20-180. Practitioner responsibility.**

### A. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;

2. Knowingly allow persons under his supervision to jeopardize patient safety or provide patient care outside of such person's scope of practice or area of responsibility. Practitioners shall delegate patient care only to persons who are properly trained and supervised;

3. Engage in an egregious pattern of disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; or

4. Exploit the practitioner/patient relationship for personal gain.

B. A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in §37.2-100 of the Code of Virginia, or hospital as defined in §32.1-123 of the Code of Virginia.

Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by Title 42, §1320a-7b(b) of the United States Code, as amended, or any regulations promulgated thereto.

C. A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.

D. A practitioner shall report any disciplinary action taken by a physical therapy regulatory board in another jurisdiction within 30 days of final action.

## **18VAC112-20-190. Sexual contact.**

A. For purposes of §54.1-3483 (10) of the Code of Virginia and this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior that:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the patient, or both; or

2. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it.

### B. Sexual contact with a patient.

1. The determination of when a person is a patient for purposes of §54.1-3483 (10) of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a patient until the patient-practitioner relationship is terminated.

2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient does not change the nature of the conduct nor negate the statutory prohibition.

C. Sexual contact between a practitioner and a former patient. Sexual contact between a practitioner and a former patient after termination of the practitioner-patient relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care. For purposes of this section, key third party of a

patient shall mean spouse or partner, parent or child, guardian, or legal representative of the patient.

E. Sexual contact between a supervisor and a trainee shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care.

#### **18VAC112-20-200. Advertising ethics.**

A. Any statement specifying a fee, whether standard, discounted or free, for professional services that does not include the cost of all related procedures, services and products which, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment that is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bona fide emergency. This provision may not be waived by agreement of the patient and the practitioner.

C. Advertisements of discounts shall disclose the full fee that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.

D. A licensee shall not use the term "board certified" or any similar words or phrase calculated to convey the same meaning in any advertising for his practice unless he holds certification in a clinical specialty issued by the American Board of Physical Therapy Specialties.

E. A licensee of the board shall not advertise information that is false, misleading, or deceptive. For an advertisement for a single practitioner, it shall be presumed that the practitioner is responsible and accountable for the validity and truthfulness of its content. For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner or practitioners responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years.

F. Documentation, scientific and otherwise, supporting claims made in an advertisement shall be maintained and available for the board's review for at least two years.

#### **Proposed Regulation**

**Title of Regulation: 18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-90, 18VAC112-20-130, 18VAC112-20-131, 18VAC112-20-150; adding 18VAC112-20-81).**

**Statutory Authority:** §§54.1-2400 and 54.1-3482.1 of the Code of Virginia.

#### **Public Hearing Information:**

August 22, 2008 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 200, Conference Room #1, Richmond, VA 23233-1463

**Public Comments:** Public comments may be submitted until 5 p.m. on October 3, 2008.

**Agency Contact:** Lisa R. Hahn, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4424, FAX (804) 527-4413, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

**Basis:** 18VAC112-20, Regulations Governing the Practice of Physical Therapy, are promulgated under the general authority of Chapter 24 (§54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) of the Code of Virginia provides the Board of Physical Therapy the authority to promulgate regulations to administer the regulatory system. The mandate for promulgation of regulations to establish a certification for direct access authorization for physical therapists is found in §54.1-3482 of the Code of Virginia.

The third enactment provides that the amendments to §54.1-3482 become effective 180 days after the effective date of regulations promulgated under §54.1-3482.1.

**Purpose:** The purpose of the regulatory action is compliance with the statute that requires the board to establish criteria for certification to provide certain physical therapy services without referral. Regulations must provide for promotion of patient safety and for continuing education to carry out direct access duties. Therefore the qualifications for certification are a doctoral or transitional program that includes education in screening for medical disorders or differential diagnosis or specific continuing education in those areas coupled with at least three years of experience in active practice. In addition, a physical therapist who intends to maintain certification will have to direct at least four of the required 30 hours of continuing education each biennium to topics related to practice in a direct access environment.

In compliance with the law, a physical therapist treating a patient without referral will be required to obtain an attestation from a patient that he is not currently being treated for the same condition by another practitioner and written



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# Regulations

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consent to provide a copy of the patient record to another practitioner identified by the patient, if the condition for which he is seeking treatment does not improve after the 14-day period in which the physical therapist is allowed to treat.

The qualifications required for certification in direct access assure that the physical therapist has education and training in the recognition of and screening for medical disorders to protect patient health and safety while in the care of the physical therapist. The requirement for written consent to provide patient records to another health care practitioner will assure that the physical therapist is able to work collaboratively with other practitioners to provide safe and effective treatment.

Substance: The proposed criteria for direct access certification are identical to those set out in the Code of Virginia and in the emergency regulations currently in effect. For those that do not hold a doctoral degree or a transitional doctorate in physical therapy, at least three years of postlicensure, active practice with evidence of 15 contact hours of continuing education in medical screening or differential diagnosis, including passage of a postcourse examination are required for certification. The application fee for certification is set at \$75.

To maintain certification, the therapist is required to have four contact hours related to carrying out direct access duties as part of the required 30 contact hours of continuing education for biennial renewal in courses relating to clinical practice in a direct access setting. The renewal fee is \$35 per biennium.

Issues: Since the regulations follow the mandate for criteria for certification and the requirement for continuing education to practice in a direct access environment, there are no particular advantages or disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth. These regulations will replace emergency regulations that expire October 31, 2008.

## The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Code of Virginia §54.1-3482 and §54.1-3482.1, the Board of Physical Therapy (Board) proposes to amend its regulations to set rules for direct access certification. These rules will allow physical therapists who obtain certification to treat patients for a limited time without a physician's referral. These proposed regulations will replace emergency regulations that expire October 31, 2008.

Result of Analysis. The benefits of these proposed changes likely exceed their costs.

Estimated Economic Impact. Before the legislative change that led to these proposed regulations, physical therapists could evaluate patients that came directly to them (rather than

going to a physician first) but could not offer treatment until these patients had obtained referrals. These proposed regulations, and authorizing legislation, will allow physical therapists who obtain certification to treat a patient for 14 business days or fewer without first obtaining a referral from a physician. As required by legislation, in order to be eligible for certification physical therapists must have either:

- completed a doctor of physical therapy program approved by the American Physical Therapy Association,
- completed a Board recognized transitional program in physical therapy or
- worked as a physical therapist for at least three years (post-licensure) and have evidence of 15 hours of continuing education in medical screening and/or differential diagnosis.

Physical therapists who want to keep their certification current must use four of the 30 hours of continuing education that they are required to complete biennially to take "courses related to clinical practice in a direct access setting". The fee for initial certification in these proposed regulations is \$75; this will replace the \$100 fee that currently must be paid under emergency regulations. The fee for biennial renewal of certification is \$35 and the fee for late renewal is an additional \$15. In addition to setting certification requirements and fees, legislation and these proposed regulations require physical therapists providing direct access services to have their patients sign a Board approved form. This form outlines the patient's responsibility to see a doctor if care is needed for more than 14 days and allows the physical therapist to release medical records to the patient's doctor.

The Department of Health Profession (DHP) reports that most physical therapists likely already meet one of the criteria for certification. Since 2004, all accredited physical therapy education programs in Virginia have only offered doctoral degrees in physical therapy; all physical therapists who have graduated from a Virginia program since that time are automatically eligible for certification. Any interested individuals who graduated from an accredited program in Virginia before 2004, and did not receive a doctoral degree, will likely have three years of active practice; these individuals will be eligible to apply for certification immediately if they have the required continuing education. If these individuals haven't completed the requisite continuing education, they will need to take 15 hours of classes before they could apply for certification.

Any interested individuals who received their education in the last three years from one of the 21 accredited programs nationwide that still offer a master's degree in physical therapy (or individuals who were licensed before 2004 but have not actively practiced for three years since then) will have to

either work in active practice for three years before applying for certification or attend a transitional program. DHP reports that transitional programs allow individuals who already have a master's degree in physical therapy to earn a doctoral degree. These programs typically require approximately three years of part time schooling to complete. Individuals who choose to complete a transitional program will incur costs for tuition, books and time spent completing classes either on-line and/or at the physical location of the physical therapy program. Because transitional physical therapy doctoral programs are part time, licensed physical therapists would likely have the time to continue working while they complete their education. In any case, direct access certification is not required for physical therapy licensure so physical therapists will likely only choose to become certified if they expect the benefits of doing so to exceed the costs.

Physical therapists who choose to pursue direct access certification may see their patient base increase if patients choose to seek direct access services instead of seeing a physician (for problems that turn out to be short lived). If this occurs, physical therapists will likely increase their revenues. Individuals with health issues that may be treated through physical therapy will likely benefit from these legislative and regulatory changes because they will have more choice in how they are treated and who they see for treatment.

**Businesses and Entities Affected.** These proposed regulations will affect all physical therapists who choose to pursue direct access certification. DHP reports that, to date, 72 of the 4,757 physical therapists currently licensed by the Commonwealth have applied for certification.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory action.

**Projected Impact on Employment.** If a significant percentage of individuals who would benefit from short term physical therapy choose to directly access those services, demand for physical therapist services may increase. If this occurs, more individuals may choose to pursue careers in physical therapy.

**Effects on the Use and Value of Private Property.** To the extent that direct access certification increases the profits for physical therapists in private practice, the value of their practices will increase.

**Small Businesses: Costs and Other Effects.** DHP does not know how many licensed physical therapists practice privately and would qualify as small businesses. Any physical therapists who do qualify as small businesses, and who choose to pursue direct access certification, will incur costs discussed above. Physical therapists will likely only choose to become certified if they expect the benefits of doing so to exceed the costs.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The rules for this certification program are

largely set through legislation. There are likely no changes that could be made to these proposed regulations that would further minimize costs.

**Real Estate Development Costs.** This regulatory action will likely have no affect on real estate development costs in the Commonwealth.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Physical Therapy concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC112-20, Regulations Governing the Practice of Physical Therapy, relating to requirements for direct access certification.

Summary:

*The proposed amendments (i) establish the qualifications and application requirements for certification in direct access; (ii) set out the responsibility for the physical therapist to obtain the medical release and patient consent required by the statute; (iii) establish a biennial renewal of certification with continuing education hours; and (iv) establish the fees for direct access certification.*

*Pursuant to Chapter 18 of the 2007 Acts of Assembly, emergency regulations establishing requirements for certification in direct access care are currently in effect, but will expire October 31, 2008.*

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# Regulations

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## **18VAC112-20-81. Requirements for direct access certification.**

A. An applicant for certification to provide services to patients without a referral as specified in §54.1-3482.1 of the Code of Virginia shall hold an active, unrestricted license as a physical therapist in Virginia and shall submit evidence satisfactory to the board that he has one of the following qualifications:

1. Completion of a doctor of physical therapy program approved by the American Physical Therapy Association;
2. Completion of a transitional program in physical therapy as recognized by the board; or
3. At least three years of postlicensure, active practice with evidence of 15 contact hours of continuing education in medical screening or differential diagnosis, including passage of a postcourse examination. The required continuing education shall be offered by a provider or sponsor listed as approved by the board in 18VAC112-20-131 and may be face-to-face or online education courses.

B. In addition to the evidence of qualification for certification required in subsection A of this section, an applicant seeking direct access certification shall submit to the board:

1. A completed application as provided by the board;
2. Any additional documentation as may be required by the board to determine eligibility of the applicant; and
3. The application fee as specified in 18VAC112-20-150.

## **18VAC112-20-90. General responsibilities.**

A. The physical therapist shall be responsible for managing all aspects of the physical therapy care of each patient and shall provide:

1. The initial evaluation for each patient and its documentation in the patient record; and
2. Periodic evaluations prior to patient discharge, including documentation of the patient's response to therapeutic intervention.

B. The physical therapist shall communicate the overall plan of care to the patient or his legally authorized representative and shall also communicate with a referring doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery, nurse practitioner or physician assistant to the extent required by §54.1-3482 of the Code of Virginia.

C. A physical therapist assistant may assist the physical therapist in performing selected components of physical therapy intervention to include treatment, measurement and data collection, but not to include the performance of an evaluation as defined in 18VAC112-20-10.

D. A physical therapist assistant's visits to a patient may be made under general supervision.

E. A physical therapist providing services with a direct access certification as specified in §54.1-3482 of the Code of Virginia shall utilize the Direct Access Patient Attestation and Medical Release Form prescribed by the board or otherwise include in the patient record the information, attestation and written consent required by subsection B of §54.1-3482 of the Code of Virginia.

## **18VAC112-20-130. Biennial renewal of license and certification.**

A. A physical therapist and physical therapist assistant who intends to continue practice shall renew his license biennially by December 31 in each even-numbered year and pay to the board the renewal fee prescribed in 18VAC112-20-150.

B. A licensee whose licensure has not been renewed by the first day of the month following the month in which renewal is required shall pay a late fee as prescribed in 18VAC112-20-150.

C. In order to renew an active license, a licensee shall be required to:

1. Complete a minimum of 160 hours of active practice in the preceding two years; and
2. Comply with continuing competency requirements set forth in 18VAC112-20-131.

D. In order to renew a direct access certification, a licensee shall be required to:

1. Hold an active, unrestricted license as a physical therapist; and
2. Comply with continuing education requirements set forth in 18VAC112-20-131 I.

## **18VAC112-20-131. Continued competency requirements for renewal of an active license.**

A. In order to renew an active license biennially after December 31, 2003, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall consider the following: (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of the following:

1. A minimum of 15 of the contact hours required for physical therapists and 10 of the contact hours required for physical therapist assistants shall be in Type 1 face-to-face courses. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

- a. The Virginia Physical Therapy Association;
- b. The American Physical Therapy Association;
- c. Local, state or federal government agencies;
- d. Regionally accredited colleges and universities;
- e. Health care organizations accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO);
- f. The American Medical Association - Category I Continuing Medical Education course; and
- g. The National Athletic Trainers Association.

2. No more than 15 of the contact hours required for physical therapists and 20 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization but which shall be related to the clinical practice of physical therapy. Type 2 activities may include but not be limited to consultation with colleagues, independent study, and research or writing on subjects related to practice.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

D. The licensee shall retain his records on the completed form with all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements for up to one year for

good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

I. Physical therapists holding certification to provide direct access without a referral shall include four contact hours as part of the required 30 contact hours of continuing education in courses related to clinical practice in a direct access setting.

## **18VAC112-20-150. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Licensure by examination.

1. The application fee shall be \$140 for a physical therapist and \$100 for a physical therapist assistant.
2. The fees for taking all required examinations shall be paid directly to the examination services.

C. Licensure by endorsement. The fee for licensure by endorsement shall be \$140 for a physical therapist and \$100 for a physical therapist assistant.

D. Licensure renewal and reinstatement.

1. The fee for active license renewal for a physical therapist shall be \$135 and for a physical therapist assistant shall be \$70 and shall be due by December 31 in each even-numbered year. From January 1, 2006, through December 31, 2006, the fee for active license renewal fee shall be \$60 for a physical therapist and \$30 for a physical therapist assistant.
2. A fee of \$25 for a physical therapist assistant and \$50 for a physical therapist for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.
3. The fee for reinstatement of a license that has expired for two or more years shall be \$180 for a physical therapist and \$120 for a physical therapist assistant and shall be submitted with an application for licensure reinstatement.

E. Other fees.

1. The fee for an application for reinstatement of a license that has been revoked shall be \$1,000.
2. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.
3. The fee for a returned check shall be \$35.
4. The fee for a letter of good standing/verification to another jurisdiction shall be \$10.

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# Regulations

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## F. Direct access certification fees.

1. The application fee shall be \$75 for a physical therapist to obtain certification to provide services without a referral.
2. The fee for renewal on a direct access certification shall be \$35 and shall be due by December 31 in each even-numbered year.
3. A fee of \$15 for processing a late renewal of certification within one renewal cycle shall be paid in addition to the renewal fee.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Application for Licensure by Examination to Practice Physical Therapy as a Physical Therapist or a Physical Therapist Assistant (rev. 7/04) 9/07).

Application for Licensure by Endorsement to Practice Physical Therapy as a Physical Therapist or a Physical Therapist Assistant (rev. 7/04) 8/07).

Application for Reinstatement of Licensure to Practice Physical Therapy as a Physical Therapist or a Physical Therapist Assistant (rev. 7/04) 8/07).

Instructions for Licensure by Endorsement to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of an American/Approved Program) (rev. 8/05) 8/07).

Instructions for Licensure by Endorsement to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of a Non-American/Nonapproved Program) (rev. 8/05) 8/07).

Instructions for Licensure by Examination to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of an American/Approved Program) (rev. 8/05) 8/07).

Instructions for Licensure by Examination to Practice as a Physical Therapist or Physical Therapist Assistant (Graduate of a Non-American/Nonapproved Program) (rev. 8/05) 8/07).

Instructions for Completing Reinstatement of Licensure Application for Physical Therapist/Physical Therapist Assistant (rev. 7/04) 2/05).

Score Transfer Request Application (rev. 5/03).

Traineeship Application, Statement of Authorization (rev. 7/04) 8/07).

Traineeship Application, Statement of Authorization (1,000-hour traineeship) (rev. 7/04) 8/07).

Traineeship Application, Statement of Authorization, Relicensure (480-hour traineeship) (rev. 7/04) 8/07).

Form #A, Claims History Sheet (rev. 7/04).

Form #B, Employment/Practice Verification of Physical Therapy (rev. 7/04).

Form #C, Verification of State Licensure (rev. 7/04).

Form #L, Certificate of Physical Therapy Education (rev. 7/04) 4/07).

Renewal Notice and Application (rev. 7/04).

Continued Competency Activity and Assessment Form (rev. 7/04) 10/06).

Instructions for Direct Access Certification (eff. 8/07).

Application for Direct Access Certification (eff. 8/07).

Patient Attestation and Medical Release Form for Physical Therapy Treatment (eff. 7/07).

VA.R. Doc. No. R08-857; Filed July 14, 2008, 3:06 p.m.

## BOARD OF COUNSELING

### Final Regulation

Titles of Regulations: 18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-10, 18VAC115-20-45, 18VAC115-20-49, 18VAC115-20-51, 18VAC115-20-52, repealing 18VAC115-20-120).

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-10, 18VAC115-50-40, 18VAC115-50-55, 18VAC115-50-60).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-10, 18VAC115-60-50, 18VAC115-60-70, 18VAC115-60-80).

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

Effective Date: September 3, 2008.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

### Summary:

*The board has amended existing regulations for supervision and residency to (i) address what constitutes professional training for an approved supervisor, (ii) remove contradictory and burdensome language regarding face-to-face supervision, and (iii) require registration of supervisors regardless of the exemption/nonexempt setting.*

*Further, the board has amended existing regulations regarding requirements for licensure by endorsement to allow for greater portability of licensure from state to state. The regulations include language that will allow for the issuance of a license by endorsement to any individual who qualifies for such license pursuant to having met the qualifications for licensure in another state and demonstrated competency by practice for at least five of the past six years. The credentials for licensure that are filed with a board-recognized credentials registry, such as that of the American Association of State Counseling Boards, would be acceptable for licensure by endorsement.*

*In the adoption of the final regulations, the board reinstated recognition of CORE-approved programs for meeting degree requirements and added flexibility to the requirement for residencies by changing the maximum number of hours of supervision that could be counted in 40 hours of work experience from two to four hours.*

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.

## **18VAC115-20-10. Definitions.**

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in §54.1-3500 of the Code of Virginia:

"Appraisal activities"

"Board"

"Counseling"

"Counseling treatment intervention"

"Professional counselor"

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

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a professional counselor.

"CACREP" means Council for Accreditation of Counseling and Related Educational Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

[ "CORE" means Council on Rehabilitation Education. ]

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of counseling according to the conditions set forth in §54.1-3501 of the Code of Virginia.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Internship" means supervised, planned, practical, advanced experience obtained in the clinical setting, observing and applying the principles, methods and techniques learned in training or educational settings.

"Jurisdiction" means a state, territory, district, province or country which has granted a professional certificate or license to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting which does not meet the conditions of exemption from the requirements of licensure to engage in the practice of counseling as set forth in §54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the United States Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a post-internship, supervised, clinical experience registered with the board.

"Resident" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in professional counseling under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented ~~face to face~~ individual or group consultation, guidance and instruction with respect to the clinical skills and competencies of the person supervised.

## **18VAC115-20-45. Prerequisites for licensure by endorsement.**

A. Every applicant for licensure by endorsement shall submit in one package the following:

1. A completed application;
2. The application processing fee;
3. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement the applicant shall have no unresolved action

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# Regulations

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against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;

4. Documentation of having completed education and experience requirements ~~substantially equivalent to those in effect in Virginia at the time of initial licensure as verified by an official transcript and a certified copy of the original application materials as specified in subsection B of this section;~~

5. Verification of a passing score on a licensure examination in the jurisdiction in which licensure was obtained; and

6. An affidavit of having read and understood the regulations and laws governing the practice of professional counseling in Virginia.

B. Every applicant for licensure by endorsement shall meet one of the following:

1. Educational requirements consistent with those specified in 18VAC115-20-49 and 18VAC115-20-51 and experience requirements consistent with those specified in 18VAC115-20-52; or

2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:

a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and

b. Evidence of clinical practice for five of the last six years immediately preceding his licensure application in Virginia.

3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

## **18VAC115-20-49. Degree program requirements.**

A. Programs that are approved by CACREP [ or CORE ] are recognized as meeting the definition of graduate degree programs that prepare individuals to practice counseling and counseling treatment intervention as defined in §54.1-3500 of the Code of Virginia.

B. The applicant shall have completed a graduate degree from a program that prepares individuals to practice counseling and counseling treatment intervention, as defined in §54.1-3500 of the Code of Virginia, which is offered by a college or university accredited by a regional accrediting agency and which meets the following criteria:

1. There must be a sequence of academic study with the expressed intent to prepare counselors as documented by the institution;

2. There must be an identifiable counselor training faculty and an identifiable body of students who complete that sequence of academic study; and

3. The academic unit must have clear authority and primary responsibility for the core and specialty areas.

## **18VAC115-20-51. Coursework requirements.**

A. The applicant shall have completed 60 semester hours or 90 quarter hours of graduate study in the following core areas with a minimum of three semester hours or ~~4.5~~ 4.0 quarter hours in each of the areas identified in subdivisions 1 through 12 of this subsection:

1. Professional identity, function and ethics;

2. Theories of counseling and psychotherapy;

3. Counseling and psychotherapy techniques;

4. Human growth and development;

5. Group counseling and psychotherapy, theories and techniques;

6. Career counseling and development theories and techniques;

7. Appraisal, evaluation and diagnostic procedures;

8. Abnormal behavior and psychopathology;

9. Multicultural counseling, theories and techniques;

10. Research;

11. Diagnosis and treatment of addictive disorders;

12. Marriage and family systems theory; and

13. Supervised internship of 600 hours to include 240 hours of face-to-face client contact.

B. If 60 graduate hours in counseling were completed prior to April 12, 2000, the board may accept those hours if they meet the regulations in effect at the time the 60 hours were completed.

## **18VAC115-20-52. Residency.**

A. Registration.

1. Applicants who render counseling services ~~in a nonexempt setting~~ shall:

a. With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;

b. Have submitted an official transcript documenting a graduate degree as specified in 18VAC115-20-49 to

include completion of the internship requirement specified in 18VAC115-20-50 or 18VAC115-20-51; and

c. Pay the registration fee.

2. Applicants After [ (effective date of regulations) September 3, 2008 ], applicants who are beginning their residencies in exempt settings ~~may shall~~ register supervision with the board to assure acceptability at the time of application.

## B. Residency requirements.

1. The applicant for licensure shall have completed a 4,000-hour supervised residency in counseling practice with various populations, clinical problems and theoretical approaches in the following areas:

- a. Counseling and psychotherapy techniques;
- b. Appraisal, evaluation and diagnostic procedures;
- c. Treatment planning and implementation;
- d. Case management and recordkeeping;
- e. Professional identity and function; and
- f. Professional ethics and standards of practice.

2. The residency shall include a minimum of 200 hours of ~~face-to-face sessions~~ supervision between supervisor and resident occurring at a minimum of one hour and a maximum of [ two four ] hours per ~~20~~ 40 hours of work experience during the period of the residency. No more than half of these hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of ~~face-to-face~~ individual supervision. ~~Face-to-face supervision~~ Supervision that is not ~~coincident concurrent~~ with a residency will not be accepted, nor will residency hours be accrued in the absence of approved ~~face-to-face~~ supervision.

3. The residency shall include 2,000 hours of face-to-face client contact.

4. A graduate-level internship completed in a program that meets the requirements set forth in 18VAC115-20-49 may count for no more than 600 hours of the required 4,000 hours of experience. The internship shall include 20 hours of ~~face-to-face~~ individual on-site supervision, and 20 hours of ~~face-to-face~~ individual or group off-site supervision. In order to count toward the residency, internship hours shall not begin until completion of 30 semester hours toward the graduate degree.

5. A graduate-level degree internship completed in a CACREP- [ , CORE- ] or ~~CORE-approved~~ COAMFTE-approved program in ~~mental health counseling~~ may count for no more than 900 of the required 4,000 hours of experience.

6. In order for any graduate-level internship to be counted toward a residency, either the clinical or faculty supervisor shall be licensed as set forth in subsection C of this section.

7. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability which limits the resident's access to qualified supervision.

8. For applicants enrolled in an integrated course of study in an accredited institution leading to a graduate degree beyond the master's level, supervised experience may begin after the completion of 30 graduate semester hours or 45 graduate quarter hours, including an internship, and shall include graduate course work in the core areas as prescribed in 18VAC115-20-50 or 18VAC115-20-51.

9. Residents may not call themselves professional counselors, directly bill for services rendered, or in any way represent themselves as independent, autonomous practitioners or professional counselors. During the residency, residents shall use their names and the initials of their degree, and the title "Resident in Counseling" in all written communications. Clients shall be informed in writing of the resident's status and the supervisor's name, professional address, and phone number.

10. Residents shall not engage in practice under supervision in any areas for which they have not had appropriate education.

C. Supervisory requirements qualifications. A person who provides supervision for a resident in professional counseling shall ~~document~~:

1. Document two years of post-licensure clinical experience; ~~have~~

2. Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-20-106 (Persons who have provided supervision for a residency prior to [ (effective date of regulations) September 3, 2008, ] shall complete such coursework or continuing education by [ (two years from the effective date of regulations) September 3, 2010 ] ; and shall be licensed

3. Shall hold an active, unrestricted license as a professional counselor, marriage and family therapist, substance abuse treatment practitioner, school psychologist, clinical psychologist, clinical social worker, or psychiatrist in the jurisdiction where the supervision is being provided. At least ~~one-half~~ 100 hours of ~~individual face-to-face~~ supervision shall be rendered by a licensed professional counselor.

D. Supervisory responsibilities.



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# Regulations

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1. Supervision by any individual whose relationship to the resident compromises the objectivity of the supervisor is prohibited.

2. The supervisor of a resident shall assume full responsibility for the clinical activities of that resident specified within the supervisory contract for the duration of the residency.

3. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period.

4. The supervisor shall report the total hours of residency and shall evaluate the applicant's competency in the six areas stated in subdivision B 1 of this section.

Ð E. Applicants shall document successful completion of their residency on the Verification of Supervision Form at the time of application. Applicants must receive a satisfactory competency evaluation on each item on the evaluation sheet. Supervised experience obtained prior to April 12, 2000, may be accepted toward licensure if this supervised experience met the board's requirements which were in effect at the time the supervision was rendered.

## ~~Part V~~ Advisory Committees

### **18VAC115-20-120. ~~Advisory committees. (Repealed.)~~**

~~A. The board may establish examining and advisory committees to assist it in evaluating candidates for licensure.~~

~~B. The board may establish an advisory committee to evaluate the mental and emotional competence of any licensee or candidate for licensure when such competence is in issue before the board.~~

## Part VI V

Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

### **18VAC115-50-10. Definitions.**

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in §54.1-3500 of the Code of Virginia: (i) "board," (ii) "marriage and family therapy," (iii) "marriage and family therapist," and (iv) "practice of marriage and family therapy."

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

"CACREP" means the Council for Accreditation of Counseling and Related Education Programs.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

"Internship" means a supervised, planned, practical, advanced experience obtained in the clinical setting observing

and applying the principles, methods and techniques learned in training or educational settings.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the United States Secretary of Education as responsible for accrediting senior post-secondary institutions and training programs.

"Residency" means a post-internship, supervised clinical experience registered with the board.

"Resident" means an individual who has submitted a supervisory contract to the board and has received board approval to provide clinical services in marriage and family therapy under supervision.

"Supervision" means an ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented, ~~face-to-face~~ individual or group consultation, guidance, and instruction with respect to the clinical skills and competencies of the person or persons being supervised.

### **18VAC115-50-40. Application for licensure by endorsement.**

A. Every applicant for licensure by endorsement shall submit in one package:

1. A completed application;
2. The application processing and initial licensure fee prescribed in 18VAC115-50-20; and
3. Documentation of licensure as follows:

a. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;

~~a b.~~ Documentation of a ~~current~~ marriage and family therapy license ~~in good standing~~ obtained by standards ~~substantially equivalent to those outlined in 18VAC115-50-50, 18VAC115-50-55, 18VAC115-50-60 and 18VAC115-50-70 as verified by a current official transcript and certified copy of the original application materials specified in subsection B of this section;~~ or

~~b c.~~ If currently holding an unrestricted license as a professional counselor in Virginia, documentation of successful completion of the requirements set forth in 18VAC115-50-50, 18VAC115-50-55 and 18VAC115-50-60.

B. Every applicant for licensure by endorsement shall meet one of the following:

1. Educational requirements consistent with those specified in 18VAC115-50-50 and 18VAC115-50-55 and experience

requirements consistent with those specified in 18VAC115-50-60; or

2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:

a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and

b. Evidence of clinical practice for five of the last six years immediately preceding his licensure application in Virginia.

3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

**18VAC115-50-55. Course work requirements.**

A. The applicant shall have completed 60 semester hours or 90 quarter hours of graduate study in the following core areas with a minimum of six semester hours or nine quarter hours completed in each of core areas identified in subdivisions 1 and 2 of this subsection, and three semester hours or ~~4.5~~ 4.0 quarter hours in each of the core areas identified in subdivisions 3 through 6 of this subsection (suggested courses are listed in parentheses after each core area):

1. Marriage and family studies (marital and family development; family systems theory);
2. Marriage and family therapy (systemic therapeutic interventions and application of major theoretical approaches);
3. Human development (theories of counseling; psychotherapy techniques with individuals; human growth and lifespan development; personality theory; psychopathology; human sexuality; multicultural issues);
4. Professional studies (professional identity and function; ethical and legal issues);
5. Research (research methods; quantitative methods; statistics);
6. Assessment and treatment (appraisal, assessment and diagnostic procedures); and
7. Supervised internship of 600 hours to include 240 hours of direct client contact. Three hundred of the internship hours and 120 of the direct client contact hours shall be with couples and families.

B. If the graduate hours in marriage and family therapy were begun prior to January 19, 2000, the board may accept those

hours if they meet the requirements which were in effect on July 9, 1997.

**18VAC115-50-60. Residency.**

A. Registration.

1. Applicants who render counseling services ~~in a nonexempt setting~~ shall:

- a. With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;
- b. Have submitted an official transcript documenting a graduate degree as specified in 18VAC115-50-50 to include completion of the internship requirement specified in 18VAC115-50-55; and
- c. Pay the registration fee.

2. ~~Applicants After [ (effective date of regulations) September 3, 2008 ], applicants who are beginning their residencies in exempt settings may shall~~ register supervision with the board to assure acceptability at the time of application.

B. Residency requirements.

1. The applicant shall have completed at least two years of supervised post-graduate degree experience, representing no fewer than 4,000 hours of supervised work experience, to include 200 hours of ~~face-to-face~~ supervision with the supervisor in the practice of marriage and family therapy. Residents shall receive a minimum of one hour and a maximum of [ ~~two~~ four ] hours of ~~face-to-face~~ supervision for every ~~20~~ 40 hours of supervised work experience. No more than 100 hours of the supervision may be acquired through group supervision, with the group consisting of no more than six residents. One hour of group supervision will be deemed equivalent to one hour of ~~face-to-face~~ individual supervision.

2. Of the 4,000 hours stipulated, at least 2,000 hours must be acquired in direct client contact of which 1,000 hours shall be with couples or families or both.

3. The residency shall consist of practice in the core areas set forth in 18VAC115-50-55.

4. The residency shall begin after the completion of a master's degree in marriage and family therapy or a related discipline as set forth in 18VAC115-50-50.

5. A graduate-level internship completed in a program that meets the requirements set forth in 18VAC115-50-50 may count for no more than 600 of the required 4,000 hours of experience. The internship shall include 20 hours of ~~face-to-face~~ individual on-site supervision, and 20 hours of ~~face-to-face~~ individual or group off-site supervision.

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# Regulations

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Internship hours shall not begin until completion of 30 semester hours toward the graduate degree.

6. A graduate-level degree internship completed in a COAMFTE-approved program or a CACREP-approved program in marriage and family counseling/therapy may count for no more than 900 of the required 4,000 hours of experience.

~~6. 7.~~ In order for a graduate level internship to be counted toward a residency, either the clinical or faculty supervisor shall be licensed as set forth in subsection C of this section.

~~7. 8.~~ Residents shall not call themselves marriage and family therapists, solicit clients, bill for services rendered or in any way represent themselves as marriage and family therapists. During the residency, they may use their names, the initials of their degree and the title "Resident in Marriage and Family Therapy." Clients shall be informed in writing of the resident's status, along with the name, address and telephone number of the resident's supervisor.

~~8. 9.~~ Residents shall not engage in practice under supervision in any areas for which they do not have appropriate education.

~~9. 10.~~ Residents who do not become candidates for licensure after five years of supervised training shall submit an explanation to the board stating reasons the residency should be allowed to continue.

C. Supervisory requirements qualifications. ~~4.~~ A person who provides supervision for a resident in marriage and family therapy shall: ~~be licensed~~

~~[ a. 1. ] Hold an active, unrestricted license as a marriage and family therapist, professional counselor, clinical psychologist, clinical social worker or psychiatrist in the jurisdiction where the supervision is being provided; and~~

~~[ b. 2. ] Supervisors shall document Document two years post-licensure marriage and family therapy experience; and~~

~~[ c. 3. ] Have received professional training in supervision, consisting of three credit hours or 4.0 quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-50-96. Persons who have provided supervision for a residency prior to [ (effective date of regulations) September 3, 2008, ] shall complete such coursework or continuing education by [ (two years from the effective date of regulations) September 3, 2010 ] .~~

D. Supervisory responsibilities.

1. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period. The supervisor shall report the total hours of residency and evaluate the applicant's competency to the board.

2. Supervision by an individual whose relationship to the resident is deemed by the board to compromise the objectivity of the supervisor is prohibited.

3. The supervisor shall assume full responsibility for the clinical activities of residents as specified within the supervisory contract, for the duration of the residency.

## Part I

### General Provisions

#### **18VAC115-60-10. Definitions.**

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in §54.1-3500 of the Code of Virginia:

"Board"

"Licensed substance abuse treatment practitioner"

"Substance abuse"

"Substance abuse treatment"

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

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a substance abuse treatment practitioner.

"CACREP" means the Council for Accreditation of Counseling and Related Education Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of substance abuse treatment according to the conditions set forth in §54.1-3501 of the Code of Virginia.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Internship" means supervised, planned, practical, advanced experience obtained in the clinical setting, observing and applying the principles, methods and techniques learned in training or educational settings.

"Jurisdiction" means a state, territory, district, province or country which has granted a professional certificate or license

to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting which does not meet the conditions of exemption from the requirements of licensure to engage in the practice of substance abuse treatment as set forth in §54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the United States Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a post-internship, supervised, clinical experience registered with the board.

"Resident" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in substance abuse treatment under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented ~~face-to-face~~ individual or group consultation, guidance and instruction with respect to the clinical skills and competencies of the person supervised.

## **18VAC115-60-50. Prerequisites for licensure by endorsement.**

A. Every applicant for licensure by endorsement shall submit in one package:

1. A completed application;
2. The application processing and initial licensure fee;
3. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved disciplinary action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;
4. Further documentation of one of the following:
  - a. A current substance abuse treatment license in good standing in another jurisdiction obtained by meeting requirements substantially equivalent to those set forth in this chapter; or
  - b. A mental health license in good standing in a category acceptable to the board which required completion of a master's degree in mental health to include 60 graduate semester hours in mental health; and

(1) Board-recognized national certification in substance abuse treatment;

(2) If the master's degree was in substance abuse treatment, two years of post-licensure experience in providing substance abuse treatment;

(3) If the master's degree was not in substance abuse treatment, five years of post-licensure experience in substance abuse treatment plus 12 credit hours of didactic training in the substance abuse treatment competencies set forth in 18VAC115-60-70 C; or

(4) Current substance abuse counselor certification in Virginia in good standing or a Virginia substance abuse treatment specialty licensure designation with two years of post-licensure or certification substance abuse treatment experience;

c. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials and evidence of clinical practice for five of the last six years immediately preceding his licensure application in Virginia.

5. Verification of a passing score on a licensure examination as established by the jurisdiction in which licensure was obtained;

6. Official transcripts documenting the applicant's completion of the education requirements prescribed in 18VAC115-60-60 and 18VAC115-60-70; and

7. An affidavit of having read and understood the regulations and laws governing the practice of substance abuse treatment in Virginia.

B. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

## **18VAC115-60-70. Course work requirements.**

A. The applicant shall have completed 60 semester hours or 90 quarter hours of graduate study.

B. The applicant shall have completed a general core curriculum containing a minimum of three semester hours or ~~4.5~~ 4.0 quarter hours in each of the areas identified in this section:

1. Professional identity, function and ethics;
2. Theories of counseling and psychotherapy;
3. Counseling and psychotherapy techniques;
4. Group counseling and psychotherapy, theories and techniques;
5. Appraisal, evaluation and diagnostic procedures;

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# Regulations

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6. Abnormal behavior and psychopathology;
7. Multicultural counseling, theories and techniques;
8. Research; and
9. Marriage and family systems theory.

C. The applicant shall also have completed 12 graduate semester credit hours or 18 graduate quarter hours in the following substance abuse treatment competencies.

1. Assessment, appraisal, evaluation and diagnosis specific to substance abuse;
2. Treatment planning models, client case management, interventions and treatments to include relapse prevention, referral process, step models and documentation process;
3. Understanding addictions: The biochemical, sociocultural and psychological factors of substance use and abuse;
4. Addictions and special populations including, but not limited to, adolescents, women, ethnic groups and the elderly; and
5. Client and community education.

D. The applicant shall have completed a supervised internship of 600 hours to include 240 hours of direct client contact. At least 450 of the internship hours and 200 of the direct client contact hours shall be in treating substance abuse-specific treatment problems.

E. One course may satisfy study in more than one content area set forth in subsections B and C of this section.

## **18VAC115-60-80. Residency.**

A. Registration. Applicants who render substance abuse treatment services ~~in a nonexempt setting~~ shall:

1. With their supervisor, register their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;
2. Have submitted an official transcript documenting a graduate degree as specified in 18VAC115-60-60 to include completion of the internship requirement specified in 18VAC115-60-70; and
3. Pay the registration fee.

B. ~~Applicants After [ (effective date of regulations) September 3, 2008 ], applicants who are beginning their residencies in exempt settings may shall~~ register supervision with the board to assure acceptability at the time of application.

C. Residency requirements.

1. The applicant for licensure shall have completed a 4,000 hour supervised residency in substance abuse treatment

with various populations, clinical problems and theoretical approaches in the following areas:

- a. Clinical evaluation;
- b. Treatment planning, documentation and implementation;
- c. Referral and service coordination;
- d. Individual and group counseling and case management;
- e. Client family and community education; and
- f. Professional and ethical responsibility.

2. The residency shall include a minimum of 200 hours of ~~face-to-face sessions~~ supervision between supervisor and resident occurring at [ a ] minimum of one hour and a maximum of [ ~~two~~ four ] hours per 20 40 hours of work experience during the period of the residency. No more than half of these hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of ~~face-to-face~~ individual supervision. ~~Face-to-face supervision~~ Supervision that is not ~~coincident~~ concurrent with a residency will not be accepted, nor will residency hours [ be ] accrued in the absence of approved ~~face-to-face~~ supervision.

3. The residency shall include at least 2,000 hours of face-to-face client contact with individuals, families or groups of individuals suffering from the effects of substance abuse or dependence.

4. A graduate level degree internship completed in a program that meets the requirements set forth in 18VAC115-60-70 may count for no more than 600 hours of the required 4,000 hours of experience. The internship shall include 20 hours of ~~face-to-face~~ individual on-site supervision, and 20 hours of ~~face-to-face~~ individual or group off-site supervision. Internship hours shall not begin until completion of 30 semester hours toward the graduate degree.

5. A graduate-level degree internship completed in a COAMFTE- or CACREP-approved program may count for no more than 900 of the required 4,000 hours of experience.

~~5- 6.~~ 6. In order for a graduate level internship to be counted toward a residency, either the clinical or faculty supervisor shall be licensed as set forth in subsection D of this section.

~~6- 7.~~ 7. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability which limits the resident's access to qualified supervision.

~~7- 8.~~ 8. Residents may not call themselves substance abuse treatment practitioners, directly bill for services rendered, or in any way represent themselves as independent,

autonomous practitioners or substance abuse treatment practitioners. During the residency, residents shall use their names and the initials of their degree, and the title "Resident in Substance Abuse Treatment" in all written communications. Clients shall be informed in writing of the resident's status, the supervisor's name, professional address, and telephone number.

~~8.~~ 9. Residents shall not engage in practice under supervision in any areas for which they have not had appropriate education.

#### D. Supervisory ~~requirements~~ qualifications.

1. A person who provides supervision for a resident in substance abuse treatment shall ~~be licensed~~ hold an active, unrestricted license as a professional counselor, marriage and family therapist, substance abuse treatment practitioner, school psychologist, clinical psychologist, clinical social worker, clinical nurse specialist or psychiatrist in the jurisdiction where the supervision is being provided.

2. All supervisors shall document two years post-licensure substance abuse treatment experience, 100 hours of didactic instruction in substance abuse treatment, and training or experience in supervision. Within three years of January 19, 2000, supervisors must document a three-credit-hour course in supervision, a 4.0-quarter-hour course in supervision, or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-60-116.

#### E. Supervisory responsibilities.

~~3.~~ 1. Supervision by any individual whose relationship to the resident compromises the objectivity of the supervisor is prohibited.

~~4.~~ 2. The supervisor of a resident shall assume full responsibility for the clinical activities of that resident specified within the supervisory contract for the duration of the residency.

~~5.~~ 3. The supervisor shall complete evaluation forms to be given to the resident at the end of each three-month period.

~~6.~~ 4. The supervisor shall report the total hours of residency and shall evaluate the applicant's competency in the six areas stated in subdivision C 1 of this section.

~~E~~ F. Documentation of supervision. Applicants shall document successful completion of their residency on the Verification of Supervision form at the time of application. Applicants must receive a satisfactory competency evaluation on each item on the evaluation sheet. Supervised experience obtained prior to January 19, 2000, may be accepted towards licensure if this supervised experience met the board's requirements which were in effect at the time the supervision was rendered.

## BOARD OF PSYCHOLOGY

### Proposed Regulation

Title of Regulation: **18VAC125-30. Regulations Governing the Certification of Sex Offender Treatment Providers (amending 18VAC125-30-50, 18VAC125-30-80).**

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

#### Public Hearing Information:

September 3, 2008 - 10 a.m. - 9960 Mayland Drive, 2nd Floor Conference Center, Richmond, VA 23233

Public Comments: Public comments may be submitted until 5 p.m. on October 3, 2008.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4697, FAX (804) 327-4435, or email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Psychology the authority to promulgate regulations to administer the regulatory system. The specific statutory mandate for the board to establish requirements for mandatory certification of sex offender treatment providers is found in §54.1-3605 of the Code of Virginia.

Purpose: Since courts and other institutions rely on the expertise of sex offender treatment providers to assess the mental condition of persons who are deemed as sex offenders, it is necessary to have a sufficient number of certified practitioners available, but also to ensure that those persons are competent, knowledgeable and current in that field. The purpose of the amended regulation is to recognize the postdegree clinical supervision an applicant has already attained for a mental health license if the hours were in the treatment and assessment of sex offender clients. Additionally, a practitioner who holds certification will be required to obtain six hours within the annual renewal period in topics related to the provision of sex offender treatment. The field of sex offender treatment is constantly evolving with new developments, research and theories. It is essential for the health and safety of the public that persons charged with treating these clients are current in those developments to provide competent care for their clients and have sufficient knowledge to advise courts and others of the potential danger a person may pose to the public.

Substance: An ad hoc committee appointed by the board reviewed the petition for rulemaking to amend the regulations to ease the supervision requirement for licensed individuals attempting to become certified as sex offender treatment providers (SOTP) to allow some of the licensure experience

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# Regulations

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to be used to satisfy supervised practice requirements for the certification.

Based on the committee recommendations, the board adopted the following:

1. Allow licensed professionals to count toward requirements for certification as a SOTP the hours of supervised experience in working with the sex offender population within the past 10 years by a licensed professional who will attest that he provided supervision only for those sex offender treatment services that he is qualified to render.

2. Require that certified SOTPs complete six hours of continuing competency related to sex offender treatment each renewal year. The six hours required to satisfy the CE requirement for SOTP certification may be hours that are also counted toward completion of a CE requirement for another license, provided the hours are clearly directed at the diagnosis and treatment of the sex offender population.

Given that the sex offender population is potentially more dangerous to the health and safety of the public than the usual client or patient under the care of a mental health provider, the board has determined that additional education and training is essential for public protection. However, a licensed mental health provider whose training and practice has included work with that population could be credited with some of the hours of supervised experience required for the additional certification. In addition, the demands of treating sex offenders and the expansion of knowledge in the field were considered in review of this regulation, and the board concluded that some requirement for continuing education was necessary.

Issues: There are no disadvantages to the public. The changes will not significantly affect the quality or amount of supervision one receives in gaining experience in a mental health field but will allow a person to credit experience for one license towards SOTP certification. Likewise, continuing education obtained for licensure as a psychologist, counselor, social worker, etc. will count toward the SOTP certification renewal if directed towards treatment of the sex offender population. The public should benefit from both changes to encourage more certified practitioners who are current in their knowledge and skills. There are no advantages or disadvantages to the agency or the Commonwealth.

## The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The current and proposed regulations require 2,000 hours of post-degree clinical experience in the delivery of clinical assessment/treatment services for sex offender treatment provider certification. The Board of Psychology (Board) proposes to allow applicants for the sex offender treatment provider certification who obtained supervised post-degree clinical experience for a mental health license within the past

ten years to receive credit for that experience toward the 2,000 hours required for sex offender treatment provider certification provided that those supervised hours were in the delivery of clinical assessment/treatment services with sex offender clients. Also, the Board proposes to require certified sex offender treatment providers to annually receive at least six hours of continuing education focusing on the treatment of sex offenders to qualify for certification renewal.

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

Estimated Economic Impact. Under the current regulations a clinical psychologist or other licensed mental health professional who has supervised experience in treatment and assessment with sex offender clients cannot apply those hours of supervised experience toward the hours of supervised experience required for the sex offender treatment provider certification. In practice, the applicant must repeat those supervised hours for certification. Having to repeat those hours provides a significant cost and deterrent to licensed mental health professionals who may consider seeking certification. There is no clear benefit to requiring these licensed professionals to repeat such work. Consequently repealing the requirement to repeat this supervised work provides a net benefit through reduced costs and a likely increase in supply of certified sex offender treatment providers to serve the public.

The Board also proposes to initiate a continuing education requirement for annual certification renewal. Specifically, the Board proposes to require six hours of continuing education related to the treatment of sex offenders. According to the Department of Health Professionals, 77% of certificate holders already hold a mental health license. All mental health licenses require in excess of six hours of continuing education per annum that could be satisfied by continuing education related to the treatment of sex offenders. Thus, for those 77% of certificate holders the proposed continuing education requirement will not in practice increase the total number hours of continuing education they must take. The proposed requirement does reduce their choice in courses. It does seem reasonable to require that sex offender treatment provider certificate holders remain current in the latest applicable knowledge related to their certification. Data is not available to estimate the benefit of this requirement, but given the minimal cost of reduced choice the benefit likely exceeds the cost.

For those 23% of certificate holders who do not also hold a mental health license and do not otherwise already obtain six hours of continuing education related to the treatment of sex offenders, the proposal will increase costs. More than six hours of applicable continuing education is available at the Annual Training Conference on the Management and Treatment of Sex Offenders in Charlottesville, which costs \$100 for registration. Applicable training is available

elsewhere around the Commonwealth.<sup>1</sup> As mentioned above, data is not available to estimate the benefit of the required continuing education, but it is likely valuable.

**Businesses and Entities Affected.** The proposed amendments affect the 358 certified sex offender treatment providers in the Commonwealth, as well as potential future certificate applicants, patients, and continuing education providers. Continuing education providers are typically educational institutions or government agencies and not small businesses. According to the Department of Health Professions most certified sex offender treatment providers work for government agencies.

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

**Projected Impact on Employment.** The proposal to allow licensed mental health professionals to apply previous supervised experience toward sex offender treatment provider certification requirements may moderately increase the supply of sex offender treatment providers.

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

**Small Businesses: Costs and Other Effects.** The proposed amendments are unlikely to significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments are unlikely to significantly affect small businesses.

**Real Estate Development Costs.** The proposed amendments are unlikely to significantly affect real estate development costs.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for

preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

<sup>1</sup> Source: Department of Health Professions

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Psychology concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC125-30, Regulations Governing the Certification of Sex Offender Treatment Providers, relating to changes in acceptance of supervised hours and continuing education requirements.

Summary:

*The proposed amendments (i) allow credit for supervised hours for licensed persons who are able to document that those hours were working with the sex offender population within the past 10 years and (ii) require that certified sex offender treatment providers have at least six hours of continuing education focused on the treatment of that population for annual renewal.*

**18VAC125-30-50. Experience requirements; supervision.**

A. An applicant for certification as a sex offender treatment provider shall provide documentation of having 2,000 hours of ~~post degree~~ postdegree clinical experience in the delivery of clinical assessment/treatment services. At least 200 hours of this experience must be face-to-face treatment and assessment with sex offender clients.

1. The experience shall include a minimum of 100 hours of face-to-face supervision within the 2,000 hours experience with a minimum of six hours per month. A minimum of 50 hours shall be in individual face-to-face supervision. Face-to-face supervision obtained in a group setting shall include no more than six trainees in a group.

2. If the applicant has obtained the required postdegree clinical experience for a mental health license within the past 10 years, he can receive credit for those hours that were in the delivery of clinical assessment/treatment services with sex offender clients provided:

a. The applicant can document that the hours were in the treatment and assessment with sex offender clients; and

b. The supervisor for those hours can attest that he is licensed and qualified to render services to sex offender clients.

B. Supervised experience obtained in Virginia without prior written board approval shall not be accepted toward



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# Regulations

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certification. Candidates shall not begin the experience until after completion of the required degree as set forth in 18VAC125-30-40. An individual who proposes to obtain supervised ~~post-degree~~ postdegree experience in Virginia shall, prior to the onset of such supervision, submit a supervisory contract along with the application package and pay the registration of supervision fee set forth in 18VAC125-30-20.

## C. The supervisor.

1. The supervisor shall assume responsibility for the professional activities of the applicant.
2. The supervisor shall not provide supervision for activities for which the prospective applicant has not had appropriate education.
3. The supervisor shall provide supervision only for those sex offender treatment services which he is qualified to render.
4. At the time of formal application for certification, the board approved supervisor shall document for the board the applicant's total hours of supervision, length of work experience, competence in sex offender treatment and any needs for additional supervision or training.

## D. Registration of supervision.

1. In order to register supervision with the board, individuals shall submit in one package:
  - a. A completed supervisory contract;
  - b. The registration fee prescribed in 18VAC125-30-20; and
  - c. Official graduate transcript.

2. The board may waive the registration requirement for individuals who have obtained at least five years documented work experience in sex offender treatment in another jurisdiction.

E. Supervised experience obtained prior to April 10, 2002, may be acceptable if they met the board's requirements that were in effect at the time the supervision was rendered.

### Part III Renewal and Reinstatement

#### **18VAC125-30-80. Annual renewal of certificate.**

A. Every certificate issued by the board shall expire on June 30 of each year.

B. Along with the renewal application, the certified sex offender treatment provider shall ~~submit~~

1. Submit the renewal fee prescribed in 18VAC125-30-20; and

2. Attest to having obtained six hours of continuing education in topics related to the provision of sex offender treatment within the renewal period. Continuing education shall be offered by a sponsor or provider approved by the Virginia Board of Social Work, Psychology, Counseling, Nursing or Medicine or by the Association for the Treatment of Sexual Abusers. Hours of continuing education used to satisfy the renewal requirements for another license may be used to satisfy the six-hour requirement for sex offender treatment provider certification, provided it was related to the provision of sex offender treatment.

C. Certificate holders shall notify the board in writing of a change of address within 60 days. Failure to receive a renewal notice and application form(s) shall not excuse the certified sex offender treatment provider from the renewal requirement.

VA.R. Doc. No. R07-240; Filed July 14, 2008, 3:00 p.m.

## BOARD OF VETERINARY MEDICINE

### Proposed Regulation

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-10, 18VAC150-20-15, 18VAC150-20-30, 18VAC150-20-70, 18VAC150-20-115, 18VAC150-20-120, 18VAC150-20-130, 18VAC150-20-140, 18VAC150-20-172, 18VAC150-20-180, 18VAC150-20-181, 18VAC150-20-190, 18VAC150-20-195, 18VAC150-20-200, 18VAC150-20-210, adding 18VAC150-20-121).**

Statutory Authority: §54.1-3800 of the Code of Virginia.

#### Public Hearing Information:

August 20, 2008 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room 4, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on October 3, 2008.

Agency Contact: Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 662-4426, FAX (804) 527-4471, or email [elizabeth.carter@dhp.virginia.gov](mailto:elizabeth.carter@dhp.virginia.gov).

Basis: Regulations are promulgated under the general authority of Chapter 24 (§54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Board of Veterinary Medicine the authority to promulgate regulations to administer the regulatory system. The specific statutory mandate to regulate veterinary establishments is found in §54.1-3804 of the Code of Virginia. The specific statutory mandate for licensure in order to practice veterinarian medicine is found in §54.1-3805 of the Code of

Virginia and for the practice of veterinary medicine is found in §54.1-3800 of the Code of Virginia.

**Purpose:** The board's purpose is to update and clarify its regulations pursuant to recommendations from the Regulatory/Legislative Committee, which conducted a periodic review of regulations in accordance with Executive Order 36 (2006).

The changes proposed are intended to protect animals in the Commonwealth. For example, clarity about practice in a preceptorship or delegation of tasks to unlicensed persons is necessary to ensure that the health and safety of animals being treated by such persons is overseen by persons licensed as competent to practice. Other provisions of this section are clarified as necessary for licensees to understand their responsibilities. While release of records is not a requirement of law, any failure to provide records that causes harm to an animal should not be acceptable. The health and safety of animals treated at licensed veterinary establishments are dependent on maintenance of standards set by the board, so the board has amended those standards as necessary.

**Substance:** Following its review of all provisions of Chapter 20, the board has proposed the following revisions:

1. Issues have been raised relating to several words and terms defined in 18VAC150-20-10. A "preceptorship" is defined but questions about its meaning and interpretation have come from educational programs. Additionally, the term "externship" is used by schools but not defined in regulation. The term "surgery" excludes certain "routine" procedures, but there may need to be further clarification about what is considered "routine." Terms newly used in the regulations have also been defined, including "companion animal" for whom individual records must be maintained.

2. In order to more fully utilize the agency subordinate process, the board adopted an expansion of the types of cases that may be delegated to an agency subordinate. The criteria for a subordinate was expanded to include former members of the board and other persons qualified to conduct administrative proceedings for this profession.

3. Questions have been raised by inspectors and licensees about the posting requirement for ambulatory practices and for relief veterinarians who do not regularly practice at an establishment. Guidance suggested by one of the inspectors was incorporated into the regulation for ease of compliance and consistency in inspections.

4. To further specify the renewal requirements, the board amended rules stating that practice with an expired or lapsed license may be grounds for disciplinary action and that failure to receive a renewal notice does not relieve the licensee of his responsibility to renew and maintain a current license.

Requests to expand the acceptable topics of continuing education were considered to add courses that enhance safety

for patients and staff, such as OSHA courses or medical recordkeeping. In the listing of approved sponsors, the board has added the American Association of Veterinary State Boards and has deleted board approval of individual sponsors to rely on the approval of courses by sponsors listed in regulation.

5. The board responded to a request from the Canadian Veterinary Medicine Association to approve its accreditation of veterinary technician programs.

6. To clarify the requirements for each profession, the board has separated the endorsement requirements for veterinary technicians into a new section, 18VAC150-20-121. It has added the option of either graduation from an AVMA-accredited program or passage of the national examination for technicians who have been licensed or certified in another state and have been practicing for at least two of the past four years.

7. In this section and in the definition section, there was further clarification on the supervision of preceptees and the duties that can be performed. The regulation has specified that a preceptee can perform only those services for which he has received adequate instruction by the educational program. The regulations also added the word extern or externships that occur within an education program.

8. Additional grounds for unprofessional conduct that the board include: (i) misrepresentation or falsification of information on an application for licensure or employment or a renewal form; (ii) failure to report animal abuse; (iii) delegation of duties to persons who are not properly trained or authorized to perform such duties; and (iv) failure to release a client record when such failure results in harm to the animal.

9. Both professional organizations in Virginia (VVMA and VALVT) recommended some limitations on the delegation of injections by unlicensed personnel to possibly exclude anesthetic or chemotherapy drugs and to exclude such invasive tasks as the placement of IV catheters. It has also been clarified that the veterinarian remains responsible for the health and safety of the animals treated by persons under his supervision.

The board has added language on alternative treatments for animals, such as chiropractic, massage, acupuncture and physical therapy to state that it must be by an order issued by a licensed veterinarian.

10. The board added the language of Guidance Document 150-2 that states microchips must be implanted in a licensed veterinary establishment, but make some exceptions for animal shelters.

11. An amendment was adopted to allow a veterinarian-in-charge (VIC) to delegate the biennial inventory to another licensee, provided the VIC remains responsible for and signs

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# Regulations

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off on the inventory for the facility. It was also clarified that it is the responsibility of the VIC to ensure that the facility maintains and current and valid license.

12. To address confusion about the meaning "working stock" of Schedule II drugs, the board eliminated the terminology and specified that all scheduled drugs must be kept secured with access to licensees but not to unlicensed personnel. Additional clarification of the drug record requirements is recommended by inspectors to ensure that the full name of the client is included, as well as the animal identification by species. Diversion of drugs places the public at risk, so laws and regulations on security and access are necessary for public protection.

13. The board has incorporated language in Guidance Document 150-9 on medical records into the regulation and on the release of records to a client.

14. An amendment was added to specify the board's policy of requiring separate facility permits for separate practices that share the same location.

15. Denial of access to an establishment to conduct an inspection is currently cause to revoke, suspend or take disciplinary action against a permit; the board added denial of access during an investigation.

Issues: The primary advantage to the public would be to provide greater specificity about the responsibility of the veterinarians for the facility and unlicensed persons who work with the practice. There is also an advantage to more specificity on drug security; lack of proper control of drugs can sometimes lead to diversion that puts the public at risk. There are no disadvantages. There are no advantages or disadvantages to the agency or the Commonwealth.

## The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Veterinary Medicine (Board) proposes to amend its regulations as a part of the periodic review process. The Board proposes to:

- 1) Modify its rules for delegation of informal fact-finding proceedings,
- 2) Remove a requirement that the Board must specifically approve any sponsors of continuing education not enumerated in these regulations and, instead, allow licensees to take continuing education courses from any entity approved by the American Association of Veterinary State Boards,
- 3) Allow veterinary technicians to meet education requirements for licensure by attending a training program approved by the Canadian Veterinary Medicine Association (CVMA),

4) Separate the requirements for licensure by endorsement for veterinary technicians from those for veterinarians and allow veterinary technicians to be eligible for such licensure if they have, along with other listed requirements, either graduated from an approved veterinary technician program or have passed the national exam,

5) Allow an establishment's designated veterinarian-in-charge to delegate biennial inventories to another Board licensee,

6) Add several grounds under which licensees may be charged with unprofessional conduct,

7) Further delimit the responsibilities that a veterinarian may delegate to a properly trained assistant, and

8) Specify that only veterinary establishments and animal shelters may inject animals with microchips.

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

Estimated Economic Impact. Currently, regulations allow the Board to appoint an agency subordinate to conduct informal fact-finding proceedings for disciplinary cases that involve failure to satisfy continuing education requirements. Currently, the Board may only appoint one of its own members as an agency subordinate. The Board proposes to allow former Board members to also serve as agency subordinates and to allow agency subordinates to conduct informal fact-finding proceedings for all disciplinary matters that do not involve standards of care.

Qualified Board members who are used as agency subordinates are likely to have more flexible schedules which would allow them to convene fact finding proceedings more quickly than if the entire Board had to find time to meet. Because this regulatory change will allow a greater number of people to serve as agency subordinates, and because more cases will be eligible for consideration, rules that allow greater use of delegation authority would likely result in disciplinary cases being resolved in a more timely manner. Individuals who have filed complaints against a licensee benefit from this regulatory change because these individuals will have their complaints resolved more quickly. The general public will likely, because of this regulatory change, have more expeditious access to information (disciplinary hearing outcomes) which might affect the decisions they make about their animal's care. Regulated entities will likely also benefit if disciplinary cases against them can be resolved more quickly. If they are innocent of any wrongdoing, quicker proceedings will allow them to clear their names more quickly. If, on the other hand, licensees have transgressed the rules that govern veterinary practice, fact finding by an agency subordinate will allow them to begin, and therefore finish, their punishment more quickly.

Current regulations contain a fairly extensive list of organizations, like American Veterinary Medicine Association (AVMA) approved colleges of veterinary medicine, which can approve or sponsor continuing education options. Additionally, other sponsors may receive Board approval upon submission of required documentation.

The Board proposes to remove the requirement that possible new sponsors submit documentation to the Board, and that the Board specifically approve new sponsors. Instead of this procedure, the Board will allow classes or activities that are taken through any sponsor approved by The American Association of Veterinary State Boards to count toward licensees' continuing education requirements. This regulatory change will likely benefit both the Board and licensees. The Board will no longer have to spend time approving new sponsors. Licensees will likely have a wider array of educational opportunities to choose from which may allow them to choose less costly classes or classes that interest them more.

Current regulations require veterinary technicians who are seeking to be licensed by examination to complete their education at a college or school accredited by the AMVA. Current regulations also require veterinary technicians who are seeking to be licensed by endorsement to meet the education and examination requirements that are contained in the regulatory section for licensure by examination.

The Board proposes to make these sections of the regulations less restrictive by allowing veterinary technicians to meet education requirements for licensure by attending a college or school accredited by the Canadian Veterinary Medicine Association (CVMA) and by allowing veterinary technicians to be eligible for licensure by endorsement if they have, along with other listed requirements, either graduated from an approved veterinary technician program or have passed the national exam.

Both these changes will benefit individuals who seek to be veterinary technicians in the state. Allowing another organization to accredit veterinary technician programs will likely result in more programs being accredited; this will allow interested individuals more choices as to where they go to school and may lower their costs for attaining the required education. Additionally, only requiring that applicants for licensure by endorsement prove completion of approved education or the national exam will likely slightly increase the number of individuals who are willing, and eligible, to move their licensure from another state to Virginia.

Under current regulations, the veterinarian-in-charge (VIC) for a veterinary facility must be the one to complete all biennial controlled substance inventories. The Board proposes to allow VICs to delegate this responsibility to another Board licensee. VICs will still have to sign the inventory and will retain responsibility for its content and

accuracy. This change will likely benefit veterinary practices (and VICs) by allowing more flexibility in who spends time on inventory. This would, for instance, allow a veterinary technician to perform an inventory at a lower wage cost per hour than would have to be paid to the VIC.

Current regulations contain grounds under which licensees may be charged with unprofessional conduct. The Board, however, has received consumer complaints which were not covered under these current grounds. As a consequence of these complaints, the Board proposes to add several grounds for disciplinary action against licensees. These new grounds are: 1) delegation of tasks to improperly trained individuals or individuals who are not authorized to perform the tasks being delegated, 2) failure to provide adequate supervision for veterinary assistants 3) misrepresenting or falsifying information on an application or renewal form, 4) filing to report animal abuse to authorities and 5) failure to release patient records when such failure could result in immediate harm to the (patient) animal.

Adding these grounds to the regulations will almost certainly result in more Board licensees being charged with unprofessional conduct. The costs associated with more disciplinary case are likely outweighed, however, by the increased protection these grounds will afford the public (especially since the grounds being added appear fairly basic and reasonable).

Current regulations contain a list of duties that licensed veterinarians may delegate to a properly trained assistant. Among other things (like grooming, feeding, prepping for surgery, etc) veterinarians may delegate administration (including injection) of schedule IV drugs. The Board proposes to clarify that injection of anesthetic and chemotherapy drugs, as well as placement of intravenous catheters cannot be delegated. The Board also proposes to add animal massage and physical therapy to the tasks that may be delegated. The Department of Health Professions (DHP) reports that it is likely the current practice for most or all veterinary practices is to not allow veterinary assistants to administer higher risk injections or insert IV catheters. To the extent that veterinarians currently do delegate these duties, prohibiting this delegation will likely increase costs since veterinarians earn more than veterinary assistants. These costs, however, are likely outweighed by the benefit to patient animals from having higher-risk procedures performed by veterinarians. Additionally, veterinary practices will likely benefit from being able to have veterinary assistants perform massage and physical therapy. Allowing this delegation will likely decrease costs since veterinarians earn more than veterinary assistants.

Current regulations specify that veterinary medicine may only be practiced out of a registered establishment (mobile or stationary) except in emergency situations or under limited, specialized practice rules. The Board proposes to incorporate

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# Regulations

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current guideline language that requires micro-chipping for identification purposes to be performed, with one exception, on the premises of a registered veterinary establishment. This new regulatory requirement will likely not increase costs for any affected entity since all establishments, both mobile and fixed, will still be able to inject microchips.

**Businesses and Entities Affected.** DHP reports that the Board currently licenses 691 full service veterinary facilities, 223 restricted service veterinary facilities, 3400 veterinarians and 1194 veterinary technicians. These entities and individuals, as well as any others that may seek licensure in the future, are affected by these regulatory changes.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory action.

**Projected Impact on Employment.** To the extent that this regulation slightly loosens the requirements for licensure, more individuals may choose to be licensed as veterinary technicians. Since these technicians would have to practice under the supervision of veterinarians, however, the number of technicians actually working in the Commonwealth may, or may not, increase.

**Effects on the Use and Value of Private Property.** To the extent that these regulatory changes places limits on delegation of tasks to lower paid employees, costs of doing business for veterinary practices will likely increase slightly. To the extent that these regulatory changes allow greater delegation of tasks to lower paid employees, costs of doing business for veterinary practices will likely decrease slightly. Taken together, these regulatory changes will likely have little net affect on the use or value of private property in the Commonwealth.

**Small Businesses: Costs and Other Effects.** DHP reports that most of the 691 full service veterinary facilities, 223 restricted service veterinary facilities and 3400 veterinarians currently licensed by the Board would qualify as small businesses. These entities are unlikely to incur any substantive costs on account of this regulatory action.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small businesses in the Commonwealth are unlikely to incur any substantive costs on account of this regulatory action.

**Real Estate Development Costs.** This regulatory action will likely have no affect on real estate development costs in the Commonwealth.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the

regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Veterinary Medicine concurs with the analysis of the Department of Planning and Budget for the proposed action on 18VAC150-20-10, Regulations Governing the Practice of Veterinary Medicine, relating to periodic review recommendations.

## Summary:

*The proposed amendments (i) expand the criteria for cases that may be delegated to an agency subordinate for informal fact-finding; (ii) expand the courses and the provider list for approved continuing education; (iii) accept the accreditation by the Canadian Veterinary Medical Association for technician education; (iv) provide an additional alternative for meeting requirements for licensure by endorsement for veterinary technicians; (v) provide additional grounds for disciplinary action; (vi) clarify rules for delegation of veterinary tasks to unlicensed persons; (vii) establish rules for injection of microchips; (viii) allow biennial inventory to be performed by licensee other than the veterinarian-in-charge; (ix) clarify regulations for drug storage, recordkeeping and reconstitution; (x) clarify minimal requirements for a patient record; and (xi) define companion animals to include horses.*

## Part I

### General Provisions

#### **18VAC150-20-10. Definitions.**

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

"Animal shelter" means a facility, other than a private residential dwelling and its surrounding grounds, that is used

to house or contain animals and that is owned, operated, or maintained by a nongovernmental entity including, but not limited to, a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals.

"Automatic emergency lighting" is lighting that is powered by battery, generator, or alternate power source other than electrical power, is activated automatically by electrical power failure, and provides sufficient light to complete surgery or to stabilize the animal until surgery can be continued or the animal moved to another establishment.

"AVMA" means the American Veterinary Medical Association.

"Board" means the Virginia Board of Veterinary Medicine.

"Companion animal" means any dog, cat, horse, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or animal under the care, custody or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.

"CVMA" means the Canadian Veterinary Medical Association.

"Full-service establishment" means a stationary or ambulatory facility that provides surgery and encompasses all aspects of health care for small or large animals, or both.

"Immediate and direct supervision" means that the licensed veterinarian is immediately available to the licensed veterinary technician or assistant, either electronically or in person, and provides a specific order based on observation and diagnosis of the patient within the last 36 hours.

"Preceptorship or externship" means a formal arrangement between an AVMA accredited college of veterinary medicine or an AVMA accredited veterinary technology program and a veterinarian who is licensed by the board and responsible for the practice of the preceptee. A preceptorship or externship shall be overseen by faculty of the college or program.

"Professional judgment" includes any decision or conduct in the practice of veterinary medicine, as defined by §54.1-3800 of the Code of Virginia.

"Restricted service establishment" means a stationary or ambulatory facility which does not meet the requirements of a full-service establishment.

"Surgery" means treatment through revision, destruction, incision or other structural alteration of animal tissue. Surgery does not include ~~routine~~ dental extractions of single-rooted

teeth or skin closures performed by a licensed veterinary technician upon a diagnosis and pursuant to direct orders from a veterinarian.

"Veterinarian in charge" means a veterinarian who holds an active license in Virginia and who is responsible for maintaining a veterinary establishment within the standards set by this chapter, for complying with federal and state laws and regulations, and for notifying the board of the establishment's closure.

"Veterinary establishment" means any fixed or mobile practice, veterinary hospital, animal hospital or premises wherein or out of which veterinary medicine is being conducted.

## **18VAC150-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.**

A. Decision to delegate. In accordance with §54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may be delegated to an agency subordinate are those that ~~only involve failure to satisfy continuing education requirements~~ do not involve standard of care or those that may be recommended by a committee of the board.

C. Criteria for an agency subordinate. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding shall include current or former board members deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

## **18VAC150-20-30. Posting of licenses; accuracy of address.**

A. All licenses, registrations and permits issued by the board shall be posted in a place conspicuous to the public at the establishment where veterinary services are being provided or available for inspection at the location where an equine dental technician is working. Licensees who do relief or temporary work in an establishment shall carry a license with them. Ambulatory veterinary practices that do not have an office accessible to the public shall carry their licenses and permits in their vehicles.

B. It shall be the duty and responsibility of each licensee, registrant and holder of a registration permit to operate a veterinary establishment to keep the board apprised at all times of his current address. All notices required by law or by this chapter to be mailed to any veterinarian, ~~certified~~ veterinary technician, registered equine dental technician or holder of a permit to operate a veterinary establishment, shall be validly given when mailed to the address furnished to the

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# Regulations

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board pursuant to this regulation. All address changes shall be furnished to the board within 30 days of such change.

## **18VAC150-20-70. Licensure renewal requirements.**

A. Every person licensed by the board shall, by January 1 of every year, submit to the board a completed renewal application and pay to the board a renewal fee as prescribed in 18VAC150-20-100. Failure to renew shall cause the license to lapse and become invalid, and practice with a lapsed license may subject the licensees to disciplinary action by the board. Failure to receive a renewal notice does not relieve the licensee of his responsibility to renew and maintain a current license.

B. ~~On and after March 1, 1997, veterinarians~~ Veterinarians shall be required to have completed a minimum of 15 hours, and veterinary technicians shall be required to have completed a minimum of six hours, of approved continuing education for each annual renewal of licensure. Continuing education credits or hours may not be transferred or credited to another year.

1. Approved continuing education credit shall be given for courses or programs related to the treatment and care of patients and shall be clinical courses in veterinary medicine or veterinary technology or courses that enhance patient safety, such as medical recordkeeping or compliance with requirements of the Occupational Health and Safety Administration (OSHA).

2. An approved continuing education course or program shall be sponsored by one of the following:

- a. The AVMA or its constituent and component/branch associations, specialty organizations, and board certified specialists in good standing within their specialty board;
- b. Colleges of veterinary medicine approved by the AVMA Council on Education;
- c. National or regional conferences of veterinary medicine;
- d. Academies or species specific interest groups of veterinary medicine;
- e. State associations of veterinary technicians;
- f. North American Veterinary Technicians Association;
- g. Community colleges with an approved program in veterinary technology;
- h. State or federal government agencies;
- i. American Animal Hospital Association (AAHA) or its constituent and component/branch associations;
- j. Journals or veterinary information networks recognized by the board as providing education in veterinary medicine or veterinary technology; or

~~k. A sponsor approved by the Virginia Board of Veterinary Medicine provided the sponsor has submitted satisfactory documentation on forms provided by the board~~ An organization or entity approved by the Registry of Approved Continuing Education of the American Association of Veterinary State Boards.

3. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following his initial licensure by examination.

4. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

5. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such an extension shall not relieve the licensee of the continuing education requirement.

6. Licensees are required to attest to compliance with continuing education requirements on their annual license renewal and are required to maintain original documents verifying the date and subject of the program or course, the number of continuing education hours or credits, and certification from an approved sponsor. Original documents must be maintained for a period of two years following renewal. The board shall periodically conduct a random audit to determine compliance. Practitioners selected for the audit shall provide all supporting documentation within 10 days of receiving notification of the audit.

7. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

C. A licensee who has requested that his license be placed on inactive status is not authorized to perform acts which are considered the practice of veterinary medicine or veterinary technology and, therefore, shall not be required to have continuing education for annual renewal. To reactivate a license, the licensee is required to submit evidence of completion of continuing education hours as required by §54.1-3805.2 of the Code of Virginia equal to the number of years in which the license has not been active for a maximum of two years.

## **18VAC150-20-115. Requirements for licensure by examination as a veterinary technician.**

A. The applicant, in order to be licensed by the board as a veterinary technician, shall:

1. Have received a degree in veterinary technology from a college or school accredited by the AVMA or the CVMA.

2. Have filed with the board the following documents:
  - a. A complete and notarized application on a form obtained from the board;
  - b. An official copy, indicating a veterinary technology degree, of the applicant's college or school transcript; and
  - c. Certification that the applicant is in good standing by each board from which the applicant holds a license, certification or registration to practice veterinary technology.
3. Pass a board-approved, national board examination for veterinary technology with a score acceptable to the board.
4. Sign a statement attesting that the applicant has read, understands, and will abide by the statutes and regulations governing veterinary practice in Virginia.

B. The application for licensure shall be valid for a period of one year after the date of initial submission.

**18VAC150-20-120. Requirements for licensure by endorsement as a veterinarian ~~or veterinary technician.~~**

A. The board may, in its discretion, grant a license by endorsement to an applicant who is licensed to practice veterinary medicine ~~or who is licensed, certified or registered to practice as a veterinary technician~~ in another state, the District of Columbia or possessions or territories of the United States, provided that:

1. All licenses, ~~certificates or registrations~~ are in good standing;
2. The applicant has been regularly engaged in clinical practice for at least two of the past four years; and
3. The applicant has met all applicable requirements of 18VAC150-20-110 ~~or 18VAC150-20-115~~, except foreign-trained veterinarians who have attained specialty recognition by a board recognized by the AVMA are exempt from the requirements of ECFVG or any other substantially equivalent credentialing body as determined by the board.

B. Provided that the applicant has met the requirements of subsection A of this section, the board may, in its discretion, waive the requirement that the applicant pass the national board exam or the clinical competency test, or both.

**18VAC150-20-121. Requirements for licensure by endorsement for veterinary technicians.**

In its discretion, the board may grant a license by endorsement to an applicant who is licensed, certified or registered to practice as a veterinary technician in another state, the District of Columbia or possessions or territories of the United States, provided that:

1. All licenses, certificates or registrations are in good standing;
2. The applicant has been regularly engaged in clinical practice for at least two of the past four years; and
3. The applicant has received a degree in veterinary technology from a college or school accredited by the AVMA or the CVMA or has passed a board-approved national board examination for veterinary technology with a score acceptable to the board within the past four years immediately preceding application.

**18VAC150-20-130. Requirements for practical training in a preceptorship or externship.**

A. The practical training and employment of qualified students of veterinary medicine or veterinary technology shall be governed and controlled as follows:

1. No student shall be qualified to receive practical training unless such student shall be duly enrolled and in good standing in a veterinary college or school ~~or veterinary technology program~~ accredited or approved by the AVMA and in the final year of his training or after completion of an equivalent number of hours as approved by the board. The student shall be engaged in a preceptorship or externship as defined by the board and authorized by his college or school.

2. A veterinary preceptee or extern may perform duties that constitute the practice of veterinary medicine for which he has received adequate instruction by the college or school and only under the on-premises supervision of a licensed veterinarian.

3. A veterinary technician preceptee or extern may perform duties that constitute the practice of veterinary technology for which he has received adequate instruction by the program and only under the on-premises supervision of a licensed veterinarian or licensed veterinary technician.

B. Prior to allowing a preceptee in veterinary medicine to perform surgery on a patient unassisted by a licensed veterinarian, a licensed veterinarian shall receive written approval from the client.

Part III  
Unprofessional Conduct

**18VAC150-20-140. Unprofessional conduct.**

Unprofessional conduct as referenced in §54.1-3807(5) of the Code of Virginia shall include the following:

1. Representing conflicting interests except by express consent of all concerned given after a full disclosure of the facts. Acceptance of a fee from both the buyer and the seller is prima facie evidence of a conflict of interest.



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# Regulations

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2. Practicing veterinary medicine or equine dentistry where an unlicensed person has the authority to control the professional judgment of the licensed veterinarian or the equine dental technician.
3. Issuing a certificate of health unless he shall know of his own knowledge by actual inspection and appropriate tests of the animals that the animals meet the requirements for the issuance of such certificate on the day issued.
4. Revealing confidences gained in the course of providing veterinary services to a client, unless required by law or necessary to protect the health, safety or welfare of other persons or animals.
5. Advertising in a manner which is false, deceptive, or misleading or which makes subjective claims of superiority.
6. Violating any state law, federal law, or board regulation pertaining to the practice of veterinary medicine, veterinary technology or equine dentistry.
7. Practicing veterinary medicine or as an equine dental technician in such a manner as to endanger the health and welfare of his patients or the public, or being unable to practice veterinary medicine or as an equine dental technician with reasonable skill and safety.
8. Performing surgery on animals in an unregistered veterinary establishment or not in accordance with the establishment permit or with accepted standards of practice.
9. Refusing the board or its agent the right to inspect an establishment at reasonable hours.
10. Allowing unlicensed persons to perform acts restricted to the practice of veterinary medicine, veterinary technology or an equine dental technician including any invasive procedure on a patient or delegation of tasks to persons who are not properly trained or authorized to perform such tasks.
11. Failing to provide immediate and direct supervision to a licensed veterinary technician or an assistant in his employ.
12. Refusing to release a copy of a valid prescription upon request from a client.
13. Misrepresenting or falsifying information on an application or renewal form.
14. Failing to report evidence of animal abuse to the appropriate authorities.
15. Failing to release client records when such failure could result in immediate harm to the animal.

## **18VAC150-20-172. Delegation of duties to ~~unlicensed veterinary personnel.~~**

A. A licensed veterinarian may delegate the administration (including by injection) of schedule VI drugs to a properly trained assistant under his ~~direction and~~ immediate and direct supervision. The prescribing veterinarian has a specific duty and responsibility to determine that the assistant has had adequate training to safely administer the drug in a manner prescribed. Injections involving anesthetic or chemotherapy drugs or the placement of intravenous catheters shall not be delegated to an assistant.

B. Additional tasks that may be delegated by a licensed veterinarian to a properly trained assistant include but are not limited to the following:

1. Grooming;
2. Feeding;
3. Cleaning;
4. Restraining;
5. Assisting in radiology;
6. Setting up diagnostic tests;
7. Prepping for surgery;
8. Dental polishing, but not dental scaling;
9. Drawing blood samples; or
10. Filling of schedule VI prescriptions under the direction of a veterinarian licensed in Virginia.

C. A licensed veterinarian may delegate duties electronically to appropriate veterinary personnel provided the veterinarian has physically examined the patient within the previous 36 hours.

D. Animal massage or physical therapy may be delegated by a veterinarian to persons qualified by training and experience by an order from the veterinarian.

E. The veterinarian remains responsible for the duties being delegated and remains responsible for the health and safety of the animal.

### Part V

#### Veterinary Establishments

## **18VAC150-20-180. Requirements to be registered as a veterinary establishment.**

A. Every veterinary establishment shall apply for registration on a form provided by the board and may be issued a permit as a full-service or restricted service establishment. Every veterinary establishment shall have a veterinarian-in-charge registered with the board in order to operate.

1. Veterinary medicine may only be practiced out of a registered establishment except in emergency situations or in limited specialized practices as provided in 18VAC150-20-171. The injection of a microchip for identification purposes shall only be performed in a veterinary establishment, except personnel of animal shelters may inject animals while in their possession.

2. Applications for permits must be made to the board 45 days in advance of opening or changing the location of the establishment or requesting a change in category to a full-service establishment.

B. A veterinary establishment will be registered by the board when:

1. It is inspected by the board and is found to meet the standards set forth by 18VAC150-20-190 and 18VAC150-20-200 where applicable. If, during a new or routine inspection, violations or deficiencies are found necessitating a reinspection, the prescribed reinspection fee will be levied. Failure to pay the fee shall be deemed unprofessional conduct and, until paid, the establishment shall be deemed to be unregistered.

2. A veterinarian currently licensed by and in good standing with the board is registered with the board in writing as veterinarian-in-charge and has paid the establishment registration fee.

### **18VAC150-20-181. Requirements for veterinarian-in-charge.**

A. The veterinarian-in-charge of a veterinary establishment is responsible for:

1. Regularly being on site on a schedule of no less than monthly and providing routine oversight to the veterinary establishment.

2. Maintaining the facility within the standards set forth by this chapter.

3. Performing the biennial controlled substance inventory and ensuring compliance at the facility with any federal or state law relating to controlled substances as defined in §54.1-3404 of the Code of Virginia. The performance of the biennial inventory may be delegated to another licensee, provided the veterinarian-in-charge signs the inventory and remains responsible for its content and accuracy.

4. Notifying the board in writing of the closure of the permitted facility 10 days prior to closure.

5. Notifying the board immediately if no longer acting as the veterinarian-in-charge.

6. Ensuring the establishment maintains a current and valid permit issued by the board.

B. Upon any change in veterinarian-in-charge, these procedures shall be followed:

1. The veterinarian-in-charge registered with the board remains responsible for the establishment and the stock of controlled substances until a new veterinarian-in-charge is registered or for five days, whichever occurs sooner.

2. An application for a new permit, naming the new veterinarian-in-charge, shall be made five days prior to the change of the veterinarian-in-charge. If no prior notice was given by the previous veterinarian-in-charge, an application for a new permit naming a new veterinarian-in-charge shall be filed as soon as possible but no more than 10 days after the change.

3. The previous establishment permit is void on the date of the change of veterinarian-in-charge and shall be returned by the former veterinarian-in-charge to the board five days following the date of change.

4. Prior to the opening of the business, on the date of the change of veterinarian-in-charge, the new veterinarian-in-charge shall take a complete inventory of all Schedule II-V drugs on hand. He shall date and sign the inventory and maintain it on premises for two years. That inventory may be designated as the official biennial controlled substance inventory.

### **18VAC150-20-190. Requirements for drug storage, dispensing, destruction, and records for all establishments, full service and restricted.**

A. All drugs shall be maintained, administered, dispensed, prescribed and destroyed in compliance with state and federal laws, which include the Drug Control Act (§54.1-3400 et seq. of the Code of Virginia), applicable parts of the federal Food, Drug, and Cosmetic Control Act (21 USC §301 et seq.), the Prescription Drug Marketing Act (21 USC §301 et seq.), and the Controlled Substances Act (21 USC §801 et seq.), as well as applicable portions of Title 21 of the Code of Federal Regulations.

B. All repackaged tablets and capsules dispensed for companion animals shall be in approved safety closure containers, except safety caps shall not be required when any person who requests that the medication not have a safety cap, or in such cases in which the medication is of such form or size that it cannot be reasonably dispensed in such containers (e.g., topical medications, ophthalmic, or otic). A client request for nonsafety packaging shall be documented in the patient record.

C. All drugs dispensed for companion animals shall be labeled with the following:

1. Name and address of the facility;

2. Name (first and last) of client;

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# Regulations

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3. Animal identification;
4. Date dispensed;
5. Directions for use;
6. Name, strength (if more than one dosage form exists), and quantity of the drug; and
7. Name of the prescribing veterinarian.

D. All drugs shall be maintained in a secured manner with precaution taken to prevent diversion.

1. All Schedule II through V drugs shall be maintained under lock at all times, with access to the veterinarian or veterinary technician only, ~~provided, however, that a working stock of Schedule II drugs under separate lock may be accessible to the licensed veterinary technician but not to any unlicensed personnel.~~

2. Whenever a veterinarian discovers a theft or any unusual loss of Schedule II, III, IV, or V drugs, he shall immediately report such theft or loss to the Board of Veterinary Medicine and to the U.S. Drug Enforcement Administration.

E. Schedule II, III, IV and V drugs ~~may~~ shall be destroyed by following the instructions contained in the drug destruction packet available from the board office which provides the latest U.S. Drug Enforcement Administration approved drug destruction guidelines.

F. The drug storage area shall have appropriate provision for temperature control for all drugs and biologics, including a refrigerator with the interior thermometer maintained between 36°F and 46°F. Drugs stored at room temperature shall be maintained between 59°F and 86°F. The stock of drugs shall be reviewed frequently and removed from the working stock of drugs at the expiration date.

G. A distribution record shall be maintained in addition to the patient's record, in chronological order, for the administration and dispensing of all Schedule II-V drugs.

This record is to be maintained for a period of two years from the date of transaction. This record shall include the following:

1. Date of transaction;
2. Drug name, strength, and the amount dispensed, administered and wasted;
3. Client and animal identification; and
4. Identification of the veterinarian authorizing the administration or dispensing of the drug.

H. ~~Invoices~~ Original invoices for all Schedule II, III, IV and V drugs received shall be maintained in chronological order on the premises where the stock of drugs is held and actual date of receipt is noted. Invoices for Schedule II drugs shall

be maintained separately from other records. All drug records shall be maintained for a period of two years from the date of transaction.

I. A complete and accurate inventory of all Schedule II, III, IV and V drugs shall be taken, dated, and signed on any date that is within two years of the previous biennial inventory. Drug strength must be specified. This inventory shall indicate if it was made at the opening or closing of business and shall be maintained on the premises where the drugs are held for two years from the date of taking the inventory.

J. Veterinary establishments in which bulk reconstitution of injectable, bulk compounding or the prepackaging of drugs is performed shall maintain adequate control records for a period of one year or until the expiration, whichever is greater. The records shall show the name of the drug(s) used; strength, if any; date repackaged; quantity prepared; initials of the veterinarian verifying the process; the assigned lot or control number; the manufacturer's or distributor's name and lot or control number; and an expiration date.

## **18VAC150-20-195. Recordkeeping.**

A. A daily record of each patient treated shall be maintained by the veterinarian at the permitted veterinary establishment and shall include pertinent medical data such as drugs administered, dispensed or prescribed, and all relevant medical and surgical procedures performed. Records should contain at a minimum:

1. Presenting complaint/reason for contact;
2. Physical examination findings, if appropriate;
3. Tests performed and results;
4. Procedures performed/treatment given and results; and
5. Drugs (and their dosages) administered, dispensed or prescribed.

B. Individual records shall be maintained on each patient, except that records for economic animals or litters of companion animals under the age of four months may be maintained on a per client basis. Client records shall be kept for a period of three years following the last office visit or discharge of such animal from a veterinary establishment.

C. An animal identification system must be used by the establishment.

D. Upon the sale or closure of a veterinary establishment involving the transfer of patient records to another location, the veterinarian shall follow the requirements for transfer of patient records in accordance with §54.1-2405 of the Code of Virginia.

E. An initial rabies certification for an animal receiving a primary rabies vaccination shall clearly display the following information: "An animal is not considered immunized for at

least 28 days after the initial or primary vaccination is administered."

**18VAC150-20-200. Standards for veterinary establishments.**

A. Full-service establishments. A full-service establishment shall provide surgery and encompass all aspects of health care for small or large animals, or both. All full-service establishments shall meet the requirements set forth below:

1. Buildings and grounds must be maintained to provide sanitary facilities for the care and medical well-being of patients.

a. Temperature, ventilation, and lighting must be consistent with the medical well-being of the patients.

b. Water and waste. There shall be on-premises:

(1) Hot and cold running water of drinking quality, as defined by the Virginia Department of Health;

(2) An acceptable method of disposal of deceased animals; and

(3) Refrigeration exclusively for carcasses of companion animals that require storage for 24 hours or more.

c. Sanitary toilet and lavatory shall be available for personnel and clients.

2. Areas within building. The areas within the facility shall include the following:

a. A reception area separate from other designated rooms;

b. Examination room or rooms;

c. Surgery room. There shall be a room which is reserved only for surgery and used for no other purpose. The walls of the surgery room must be constructed of nonporous material and extend from the floor to the ceiling. In order that surgery can be performed in a manner compatible with current veterinary medical practice with regard to anesthesia, asepsis, life support, and monitoring procedures, the surgery room shall:

(1) Be of a size adequate to accommodate a surgical table, anesthesia support equipment, surgical supplies, the veterinarian, an assistant, and the patient;

(2) Be kept so that storage in the surgery room shall be limited to items and equipment normally related to surgery and surgical procedures; and

(3) For small animal facilities, have a door to close off the surgery room from other areas of the practice.

d. Laboratory. The veterinary establishment shall have, as a minimum, proof of use of either in-house laboratory service or outside laboratory services for performing the

following lab tests, consistent with appropriate professional care for the species treated:

(1) Urinalysis, including microscopic examination of sediment;

(2) Complete blood count, including differential;

(3) Flotation test for ova of internal parasites;

(4) Skin scrapings for diagnosing external parasites;

(5) Blood chemistries;

(6) Cultures and sensitivities;

(7) Biopsy;

(8) Complete necropses, including histopathology; and

(9) Serology.

e. Animal housing areas. These shall be provided with:

(1) Separate compartments constructed in such a way as to prevent residual contamination;

(2) Accommodations allowing for the effective separation of contagious and noncontagious patients; and

(3) Exercise runs which provide and allow effective separation of animals or walking the animals at medically appropriate intervals.

3. Radiology. A veterinary establishment shall:

a. ~~Have proof of use of either~~ Either have radiology service in-house or documentation of outside services for obtaining diagnostic-quality radiographs.

b. If radiology is in-house:

(1) Each radiograph shall be permanently imprinted with the identity of the facility or veterinarian, patient and the date of exposure. Each radiograph shall also be clearly labeled by permanent imprinting to reflect anatomic specificity.

(2) Document that radiographic equipment complies with all requirements of 12VAC5-480-8520, Veterinary Medicine Radiographic Installations, of the Virginia Department of Health document, "Ionizing Radiation Rules and Regulations" (1988), which requirements are adopted by this board and incorporated herewith by reference in this chapter.

c. Maintain radiographs as a part of the patient's record. If a radiograph is transferred to another establishment or released to the client, a record of this transfer must be maintained on or with the patient's records.

4. Equipment; minimum requirements.

a. Examination room containing a table with nonporous surface.

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# Regulations

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b. Surgery suite.

- (1) Surgical table with nonporous surface;
- (2) Surgical supplies, instruments and equipment commensurate with the kind of surgical services provided;
- (3) Automatic emergency lighting;
- (4) Surgical lighting;
- (5) Instrument table, stand, or tray; and
- (6) Waste receptacle.

c. Radiology (if in-house).

- (1) Lead aprons and gloves;
- (2) Radiation exposure badges; and
- (3) X-ray machine.

d. General equipment.

- (1) Steam pressure sterilizer or an appropriate method of sterilizing instruments;
- (2) Internal and external sterilization monitors, if steam pressure sterilizers are used;
- (3) Stethoscope;
- (4) Thermometer;
- (5) Equipment for delivery of assisted ventilation, including but not necessarily limited to:
  - (a) A resuscitation bag; and
  - (b) Endotracheal tubes.
- (6) Scales; and
- (7) Storage for records.

B. Restricted establishments. When the scope of practice is less than full service, a specifically restricted establishment permit shall be required. Upon submission of a completed application, satisfactory inspection and payment of the permit fee, a restricted establishment permit may be issued. Such restricted establishments shall have posted in a conspicuous manner the specific limitations on the scope of practice on a form provided by the board.

1. Large animal establishment, ambulatory practice. A large animal ambulatory establishment is a mobile practice in which health care of large animals is performed at the location of the animal. Surgery on large animals may be performed as part of a large animal ambulatory practice provided the facility has surgical supplies, instruments and equipment commensurate with the kind of surgical services provided. All large animal ambulatory establishments shall meet the requirements of a full-service establishment in

subsection A of this section with the exception of those set forth below:

- a. All requirements for buildings and grounds.
- b. All requirements for an examination room and surgery suite.
- c. Equipment for assisted ventilation.
- d. Scales.

2. Small animal establishment, house call practice. A small animal house call establishment is a mobile practice in which health care of small animals is performed at the residence of the owner of the small animal. Surgery may be performed only in a surgical suite that has passed inspection. Small animal house call facilities shall meet the requirements of a full-service establishment in subsection A of this section with the exception of those set forth below:

- a. All requirements for buildings and grounds.
- b. All requirements for an examination room or surgery suite.
- c. Steam pressure sterilizer.
- d. Internal or external sterilization monitor.

3. Small animal establishment, outpatient practice. A small animal outpatient establishment is a stationary facility or ambulatory practice where health care of small animals is performed. This practice may include surgery, provided the facility is equipped with a surgery suite as required by subdivision A 2 c of this section. Overnight hospitalization shall not be required. All other requirements of a full-service establishment shall be met.

C. A separate facility permit is required for separate practices that share the same location.

**18VAC150-20-210. Revocation or suspension of a veterinary establishment permit.**

A. The board may revoke or suspend or take other disciplinary action deemed appropriate against the registration permit of a veterinary establishment if it finds the establishment to be in violation of any provisions of laws or regulations governing veterinary medicine or if:

1. The board or its agents are denied access to the establishment to conduct an inspection or investigation;
2. The licensee does not pay any and all prescribed fees or monetary penalties;
3. The establishment is performing procedures beyond the scope of a restricted establishment permit; or
4. The establishment has no veterinarian-in-charge registered with the board.

B. The Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) shall apply to any determination under this section.

V.A.R. Doc. No. R07-754; Filed July 14, 2008, 2:59 p.m.

## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Proposed Regulation

**Title of Regulation:** 22VAC40-211. **Resource, Foster and Adoptive Family Home Approval Standards (adding 22VAC40-211-10 through 22VAC40-211-110).**

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comments:** Public comments may be submitted until October 3, 2008.

**Agency Contact:** Phyl Parrish, Quality Review Program Manager, Department of Social Services, Division of Family Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7926, FAX (804) 726-7895, TTY (800) 828-1120, or email phyl.parrish@dss.virginia.gov.

**Basis:** The state legal authority to promulgate the new Resource, Foster and Adoptive Family Home Approval Standards regulation can be found in §§63.2-217 and 63.2-319 of the Code of Virginia. Section 63.2-217 provides that the board shall adopt such regulations not in conflict with Title 63.2 of the Code of Virginia as may be necessary to carry out the purpose of Title 63.2. Section 63.2-319 provides that the board shall establish minimum education, professional and training requirements and performance standards for the personnel employed by the Commissioner and local boards in the administration of Title 63.2 and adopt regulations to maintain such education, professional and training requirements and performance standards.

**Purpose:** The purpose of the proposed action is to adopt a new regulation specific to the approval requirements for resource, foster and adoptive family homes providers approved by local departments. The new regulation will fill the void left by the 2007 repeal of 22VAC40-770. The new regulation intends to ensure compliance with changes to federal and state laws and regulations regarding resource, foster and adoptive family homes. Adherence to these standards is essential to protect the health, safety and welfare of families and children who are part of our foster care system. In addition, the new regulations will create consistency between providers approved by local departments

and licensed child-placing agencies. This consistency was an action step of the Performance Improvement Plan developed in response to the federal Child and Family Services Review and is required by federal regulations.

**Substance:** Substantive provisions include definitions that are consistent with definitions contained in the Code of Virginia and other social services regulations; require a Department of Motor Vehicles check on applicants; specify barrier crimes that would prohibit the provider from being approved; mandate training requirements for providers; specify acceptable child-sleeping arrangements, the capacity in each home; specify medical requirements for providers; mandate gun and ammunition safety in a provider's home; specify home study requirements; specify applicant grievance procedures; and provide for fire safety. In addition, the regulation establishes requirements for criminal background checks and child protective services central registry searches, and provider reapproval requirements. The regulation establishes consistency between regulations for approval of local departments and private child-placing agency resource, foster and adoptive homes.

**Issues:** The public is expected to benefit from this new regulation as it strengthens the safety requirements for the providers who care for the vulnerable children placed in the Commonwealth's foster care system. It also strengthens the authority of the local departments to hear all applicant grievances and make the final decision as to who will be approved as a resource, foster or adoptive home provider. Finally, these new regulations will benefit the local departments and individuals providing care for children in foster care by ensuring that the regulations are consistent with state and federal law and other related social services regulations.

#### The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to promulgate a new, specific, regulation which will address requirements for approval of resource, foster, and adoptive family home providers by local departments of social services (LDSS). These requirements were addressed in 22VAC40-770 (Standards and Regulations for Agency Approved Providers) which had rules for all types of agency approved providers. This generic regulation was repealed in 2007.

In addition to re-promulgating some of the rules for foster and adoptive home approval that had been in the regulation that was repealed, the Board also proposes several substantive changes to the requirements. Such substantive changes include the following: 1) changing the definition of infant from up to 24 months to 16 months, 2) establishing the "resource parent" designation, 3) requiring that LDSS obtain DMV driver record check for any resource, foster, and

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## Regulations

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adoptive parents and any other adults in household expected to transport children, 4) requiring foster and resource parent applicants to submit the results of a physical examination performed by a licensed physician within the past 12 months, 5) requiring that the LDSS conduct at least three face-to-face interviews with each applicant, 6) requiring applicants to obtain at least three references from persons who have knowledge of the applicant's ability, skill, or experience in the provision of services and who is not related to the applicant, 7) requiring that LDSS ensure that each provider receives annual training, 8) prohibiting providers from having children over the age of 16 months sharing a bed, 9) requiring that providers store ammunition in a locked cabinet separate from firearms, 10) requiring LDSS to verify and document that providers protect children from household pets that may be a health or safety hazard, 11) adding language stating that the provider be able to ensure that they can be responsive to special medical needs, including environmental sensitivities, of the child, 12) requiring that providers keep legible records pertaining to identification, health, education, and safety of the child 13) mandating LDSS to obtain criminal record background checks at least once every 4 years and 14) changing the approval period for providers from 24 to 36 months.

**Result of Analysis.** The benefits likely exceed the costs for most proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

**Estimated Economic Impact.** Under both 22VAC40-770 (recently repealed) and this proposed regulation, two foster parents in a home can have up to 8 foster children and one foster parent in a home can have up to four foster children. Infants count as two older children for the purposes of this cap on number of foster children per foster parent. In the recently repealed regulation infant is defined as any child from birth up to 24 months of age. Under this proposed regulation infant is defined as any child from birth up to 16 months of age. Thus children between 17 months of age and 24 months of age count as two children toward the cap under the recently repealed regulation and as one child under the proposed regulation. This proposed change will allow foster parents to accept one additional foster child when one of their current foster children is between 17 months of age and 24 months, or to accept a new foster child between 17 months of age and 24 months when they have room for one additional child. In total this proposed change will moderately increase the capacity to place foster children statewide.

The Board proposes to establish a "resource parent" designation. A "resource parent" is defined as an approved relative or foster family home that agrees to, and is dually approved to, both support reunification and be prepared to adopt the child if the child and family do not reunify. According to the state Department of Social Services (DSS), establishing the resource parent designation will allow the

process by which foster parents can become adoptive parents to run more smoothly and quickly, when appropriate. Although DSS expects that most applicants will choose to be resource parents, individual foster parents or families can choose to opt out of the additional approval if they never intend to adopt a child. Because foster parents can opt out of the additional approval requirements that adoptive parent must meet, and because approving a resource parent is likely less time and resource consuming than having that parent go through two approval processes, this proposal appears to be beneficial without creating any accompanying costs.

Consistent with this regulation, the term "provider" will be used throughout this report to represent resource, foster, and adoptive parents.<sup>1</sup> Recently repealed regulation required that providers who transport children have a valid driver's license. This proposed regulation specifies that LDSS must obtain from DMV a driver record check for any resource, foster, and adoptive parents and any other adults in household expected to transport children and may consider the results in the approval process of the home. According to DSS the driver record checks are provided for free to the LDSS. Specifying in this regulation that the LDSS check driver records will likely increase the frequency that driver records are checked, and will likely increase the frequency that providers with bad driving records are detected. This may on a few occasions result in foster children being removed from dangerous situations. Thus the small addition in time it takes to check driving records is likely exceeded by the benefit in improved safety for children.

Recently repealed regulation required that adoptive parent applicants submit the results of a physical examination performed by a licensed physician within the past 12 months to demonstrate they are possess sufficiently health. This proposed regulation extends this requirement to foster and resource parent applicants. This proposal adds a cost for foster and resource parent applicants, but the cost is likely exceeded by the benefit of eliminated physically incapable applicants.

Recently repealed regulation required that the provider applicants "participate in interviews with the agency." This proposed regulation requires that the LDSS conduct at least three face-to-face interviews with each applicant. In practice this may result in additional interaction with LDSS staff prior to approval decisions. This can be beneficial in that the additional contact can increase the likelihood that problems could be detected. On the other hand, it increases costs for LDSS that are not already complying with this proposed requirement.

Under recently repealed regulation and current Board policy, provider applicants are required to provide two references from persons who have knowledge of the applicant's ability, skill, or experience in the provision of services and who are not related to the applicant. This proposed regulation requires

three references. Given the great responsibility that providers have for the children in their care, the small costs that applicants incur by acquiring a third reference is outweighed by the benefit of some additional assurance that the applicant is indeed competent.

Recently repealed regulation did not address training. This proposed regulation specifies that LDSS ensure that each provider receives pre-service and annual training. DSS proposes to set areas of competency that must be covered in training but does not propose to specify what training program must be used. According to DSS, most, but not all, LDSS currently do provide training. This proposed regulation also states that DSS will provide opportunities for training on an annual basis at no charge. Depending on the quality of the training, this proposed requirement can potentially be significantly beneficial toward the care of foster and adopted children. The training requirement will create time cost for both staff and providers. DSS's base budget now contains funds for provider training so LDSS offices are unlikely to incur any additional direct costs on account of training requirements.

Recently repealed regulation stated that children of opposite sex should not share a double bed. This proposed regulation states that children over the age of 16 months shall not share a bed. For those localities where the LDSS permit bed sharing, this proposed change will have some impact. This will increase costs for what is hopefully a very small number of providers. The cost is likely exceeded by the benefit of increased rest for affected children. Increased rest will improve affected children's health and ability to learn.

Providers are required to store firearms and ammunition in a locked cabinet that is not accessible to children under recently repealed regulation. The Board proposes to further require that ammunition be stored in a separate locked area. The proposal most likely does moderately decrease the likelihood of firearm accidents involving children. On the other hand, complying with the proposal will make it more difficult for a provider to access loaded firearms if needed to confront an intruder. The estimated benefit of being able to quickly access a loaded firearm for familial protection varies greatly depending upon the analyst. Thus, whether the benefit of a moderate decrease in the likelihood of firearm accidents involving children exceeds the cost of slower access to a loaded firearm when family members are threatened cannot be accurately estimated at this time.

Recently repealed regulation required that the provider protect their children from household pets which may be a health or safety hazard. Under this proposed regulation, LDSS must request and document verification of provider compliance in the provider record. Documenting verification of provider compliance may produce some addition pressure for compliance, and may moderately increase compliance in

practice. This could significantly improve children's health in a small number of circumstances.

The Board proposes to require that providers be able to ensure that they can be responsive to the special medical needs, including environmental sensitivities, of the child. This is implied, but not specified in the recently repealed regulation. Specifying this may encourage LDSS staff to focus more on this aspect of care. To the extent that this happens, this additional language may in a few situations result in improved care for children under foster and adoptive care.

The Board also proposes to require that providers keep written legible records pertaining to identification, health, education, and safety of the child. Specifically, the legible records must include: a) identifying information on the child, b) name, address, and work telephone numbers of the LDSS caseworker, and LDSS after hours emergency contact information, c) name, address, and home and/or work telephone numbers of persons authorized to pick up the child in care, d) name of persons not authorized to call or visit the child, e) educational records, report cards and other school-related documentation, f) medical information pertinent to the health care of the child, g) correspondence related to the child, h) the service plan as well as other written child information provided by the LDSS, and i) placement agreement between the provider and the LDSS. Keeping such organized legible records will cost providers some time, but will be significantly beneficial in providing for affected children's health, education, and safety if the provider should somehow become incapacitated.

Recently repealed regulation specified that the provider and other adult household members who come into contact with children not be convicted of a felony or misdemeanor which jeopardizes the safety or proper care of clients. This proposed regulation specifies that the LDSS complete criminal background checks at the time of application and at least once every four years. The requirement for rechecks every four years has the potential to significantly affect how often criminal background checks are conducted in practice by LDSS. This may create significant benefits in that more criminal activity by those in households with children is detected; and children can be moved to safer surroundings. According to DSS, criminal background checks cost \$20 per person.

Recently repealed regulation required that foster homes be re-approved every 24 months. This proposed regulation allows foster and resource families to be approved for 36 months before they must be re-approved. This change will likely reduce costs for both LDSS offices and foster families since time and recourses will be spent on this only every three years rather than every two. Since LDSS offices have fairly frequent contact with foster and resource families outside of the approval process, and since foster and resource families



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# Regulations

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will now be subject to ongoing training, this change will likely save money without having the care of affected children be adversely affected.

**Businesses and Entities Affected.** This proposed regulation affects the 120 LDSS in the Commonwealth, as well as foster parents, adoptive parents, resource parents, and children of such parents.

**Localities Particularly Affected.** This proposed regulation affects all localities.

**Projected Impact on Employment.** This proposed regulation may necessitate the hiring of a small number of additional staff for LDSS.

**Effects on the Use and Value of Private Property.** Providers will encounter small additional compliance costs on account of this regulatory action.

**Small Businesses: Costs and Other Effects.** This regulatory action does not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** This regulatory action does not significantly affect small businesses.

**Real Estate Development Costs.** This regulatory action will likely have no affect on real estate development costs in the Commonwealth.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

<sup>1</sup> When referring to 22VAC40-770, "provider" indicates foster and adoptive parents only since the resource parent designation does not exist in 22VAC40-770.

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

Summary:

*The proposed regulations are intended to ensure compliance with changes to federal and state laws and regulations regarding resource, foster and adoptive family homes. Regulations addressing approval of providers by local departments were contained in 22VAC40-770, which was repealed in 2007. This action is necessary to provide local departments with guidance in the approval of provider homes. In addition, the new regulations will create consistency between providers approved by local departments of social services and licensed child-placing agencies. This consistency was an action step of the Performance Improvement Plan developed in response to the federal Child and Family Services Review and is required by federal regulations.*

*Major components of the regulation include making all definitions and requirements consistent with other social services regulations and applicable approval requirements that fall under the purview of other state agencies; mandating training for resource, foster and adoptive home providers; requiring a narrative home study report; creating one set of standards for the approval of all types of family home providers (i.e.; resource, foster and adoptive) to streamline the process of approval; requiring proof of provider approval to be maintained in the child's file; and ensuring safety through standards for the home of the provider and requirements for criminal background checks.*

CHAPTER 211  
RESOURCE, FOSTER AND ADOPTIVE FAMILY HOME  
APPROVAL STANDARDS

22VAC40-211-10. Definitions.

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

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

"Adult" means any person 18 years of age or over.

"Applicant" means an individual or couple applying to be approved as a resource, foster and/or adoptive home provider.

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) parent or other person legally responsible for the child's care;

(ii) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person; (iii) person responsible by virtue of their position of conferred authority; or (iv) adult person residing in the home with the child.

"Central registry" means a subset of the child abuse and neglect information system and is the name index with identifying information on an individual named as an abuser and/or neglector in founded child abuse and/or neglect complaints or reports not currently under administrative appeal, maintained by the department.

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

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to §63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §63.2-900, 63.2-903 or 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child abuse and neglect information system" means the computer system that collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the central registry of founded complaints not on appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged child protective services reports. This system is the official state automated system.

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

"Corporal punishment" means punishment administered through the intentional infliction of pain or discomfort to the body through actions such as, but not limited to, (i) striking, or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort.

"Department" means the State Department of Social Services.

"Dual approval process" means a process that includes a home study, mutual selection, interviews, training and background checks to be completed on all applicants to be considered for approval as a resource, foster and/or adoptive family home provider.

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

"Fully approved" means a decision by the local department that the provider has met all requirements to be approved as a resource, foster and/or adoptive home provider.

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

"Infant" means any child from birth up to 16 months of age.

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

"Parent" means the birth or adoptive parent of a child.

"Provider" means resource, foster and/or adoptive provider.

"Resource parent" means a provider who is trained and committed both to support reunification and also to be prepared to adopt the child if the child and family do not reunify.

## **22VAC40-211-20. Approval of provider homes.**

A. When applicants are approved in accordance with these standards, they are approved as foster families and/or adoptive families or resource families. The approved provider shall, however, be allowed to choose to provide only foster care or adoption services should they not wish to serve as a resource family.

B. If the provider cannot meet the standards described in these sections, the local department may, upon its discretion, allow a variance on certain standards in accordance with 22VAC40-211-100. If the variance is not allowed, the local department shall not approve the home for the placement of children.

C. These standards apply to adoptive home providers until the final order of adoption is issued.

## **22VAC40-211-30. Background checks and health standards.**

A. All local department approved resource, foster and/or adoptive providers shall be at least 18 years of age.

B. All background checks must be in accordance with applicable federal and state laws and regulations. Convictions of offenses as set out in §63.2-1719 of the Code of Virginia shall preclude approval an application to become resource, foster and/or adoptive provider.

C. Documentation of the results of the criminal records check shall be maintained in the applicant's record. Criminal history record information shall not be disseminated to any other party, nor shall it be archived except in the local department's provider file.

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# Regulations

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D. The resource, foster and/or adoptive home applicant and all other household members who come in contact with children shall submit to tuberculosis screening or tests in compliance with Virginia Department of Health requirements. The applicant and other caretakers residing in the home shall submit the results of a physical examination administered within the 12-month period prior to approval, from a licensed health care professional that comments on each applicant's or caretaker's mental or physical condition relative to taking care of a child.

E. The local department shall obtain a Department of Motor Vehicle driver record check for any resource, foster and/or adoptive applicants or other adults in the home who are expected to transport children and may consider the results of the driver record check in the approval process.

## **22VAC40-211-40. Home study requirements.**

A. Applicants for resource, foster and/or adoptive provider shall complete and submit an application to become an approved provider in accordance with department requirements and on department-approved forms or other forms that address all of the department's requirements.

B. Upon submission of a completed provider application, the local department is responsible for ensuring the completion of the home study process.

C. Local departments shall conduct a minimum of three face-to-face interviews with each applicant, at least one shall be in the applicant's home. If there are two individuals listed as applicants, at least one interview must be with both individuals. At least one interview shall be with all individuals who are residing in the home.

D. The local department shall obtain at least three references from persons who have knowledge of each applicant's character and applicable experience with children and caretaking of others. At least one reference per person shall be from a nonrelative.

E. Local departments shall ask if a prospective resource, foster and/or adoptive provider previously applied to, or was approved by, another local department or licensed child-placing agency. The local department shall have the applicant sign a request to release information from the other agency in order to obtain information about previous applications and performance and shall use that information in considering approval of the applicant.

F. The home study shall contain all department-required information and be documented by a combination of narrative and other data collection formats, and shall be signed and dated by the individual completing the home study and the director of the local department or his designee. The information presented shall include:

1. Demographic information including:

a. Age of applicant;

b. Marital status and history; and

c. Family composition and history.

2. Financial information including:

a. Employment information on applicant;

b. Assets and resources of applicant; and

c. Debts and obligations of applicant.

3. List of individuals involved in completing the home study process and their role.

4. Narrative documentation shall include information from the interviews, references, observations and other available information, and shall be used to assess and document that the applicant:

a. Is knowledgeable about the necessary care for children and physically and mentally capable of providing the necessary care for children;

b. Is able to sustain positive and constructive relationships with others in their care, and relate to people with respect, courtesy and understanding;

c. Family is able to articulate a reasonable process for managing emergencies and ensuring the adequate care, safety and protection of children;

d. Expresses attitudes that demonstrate the capacity to love and nurture a child born to someone else;

e. Expresses appropriate motivation for reasons to foster or adopt;

f. If married, shows marital stability; and

g. Has the financial resources to provide for current and ongoing household needs.

5. Documentation of compliance with 22VAC40-211-70.

6. A confidentiality form signed by the providers, which local departments shall keep in the child's file.

G. Significant changes in the circumstances of the provider that would impact the conditions of their approval require an updated home study documented through an addendum. This does not change the approval period for the provider.

## **22VAC40-211-50. Approval period and documentation of approval.**

A. The approval period for a provider is 36 months.

B. The approved provider shall be given an approval certificate specifying the following:

1. Type of approval (resource, foster and/or adoptive family home provider);

2. Date when the approval became effective and the date when the approval lapses;

3. The gender, age and number of children recommended for placement in the home; and

4. The signature and title of the individual approving the home.

C. Documentation shall be maintained on the provider and child:

1. The local department's file on the child shall contain:

a. A copy of the provider's approval certificate; or

b. If the provider is licensed by a licensed child placing agency, a copy of the licensed child-placing agency license and the provider home approval certificate or letter.

2. All information on the provider able to be maintained in the department's official child welfare data system shall be maintained in that system.

3. The local department's file on the provider shall contain but not be limited to:

a. A copy of the provider's approval certificate;

b. A copy of the criminal background check results;

c. A copy of the Child Protective Services check;

d. A copy of the application;

e. Reference letters;

f. A copy of the home study and supporting documentation;

g. Documentation of orientation and training; and

h. Documentation of contacts and visits in the provider's home.

4. Local departments shall require the provider to maintain legible written information on each child in their care including:

a. Identifying information on the child;

b. Name, address, and work telephone number of the local department caseworker and local department after hours emergency contact information;

c. Name, address, and home and/or work telephone numbers of persons authorized to pick up the child;

d. Name of persons not authorized to call or visit the child;

e. Educational records, report cards and other school-related documentation;

f. Medical information pertinent to the health care of the child including all licensed health care providers' names, addresses and telephone numbers;

g. Correspondence related to the child;

h. The service plan as well as other written child information provided by the local department; and

i. The placement agreement between the provider and the local department.

5. Providers shall maintain files in a secure location in order to protect the confidentiality of that information. The file and its contents shall not be shared with anyone other than those approved by the local department and shall be returned to the local department if the child leaves the provider's home.

6. The local department and its representatives shall have access to all records.

## **22VAC40-211-60. Training.**

A. The local department shall ensure that pre-service training is provided for resource, foster and adoptive family home providers. This training shall address but not be limited to the following core competencies:

1. Factors that contribute to neglect, emotional maltreatment, physical abuse, and sexual abuse, and the effects thereof;

2. Conditions and experiences that may cause developmental delays and affect attachment;

3. Stages of normal human growth and development;

4. Concept of permanence for children and selection of the permanency goal;

5. Reunification as the primary child welfare goal, the process and experience of reunification;

6. Importance of visits and other contacts in strengthening relationships between the child and his birth family, including his siblings;

7. Legal and social processes and implications of adoption;

8. Support of older youth's transition to independent living;

9. The professional team's role in supporting the transition to permanency and preventing unplanned placement disruptions;

10. Relationship between child welfare laws, the local department's mandates, and how the local department carries out its mandates;

11. Purpose of service planning;

12. Impact of multiple placements on a child's development;

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# Regulations

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13. Types of and response to loss, and the factors that influence the experience of separation, loss, and placement;

14. Cultural, spiritual, social, and economic similarities and differences between a child's primary family and foster or adoptive family;

15. Preparing a child for family visits and helping him manage his feelings in response to family contacts;

16. Developmentally appropriate, effective and nonphysical disciplinary techniques;

17. Promoting a child's sense of identity, history, culture, and values;

18. Respecting a child's connection to his birth family, previous foster families and/or adoptive families;

19. Being nonjudgmental in caring for the child, working with his family, and collaborating with other members of the team;

20. Roles, rights, and responsibilities of foster parents and adoptive parents; and

21. Maintaining a home and community environment that promotes safety and well-being.

B. Local departments shall ensure that each provider receives annual ongoing training.

1. Training shall be relevant to the needs of children and families and may be structured to include multiple types of training modalities (for example, online foster parent training courses; seminars and conferences).

2. The department shall provide opportunities for training on an annual basis.

C. The provider is required to complete pre-service and annual in-service trainings.

D. The provider is considered fully approved if he meets all other requirements for approval and is enrolled in and completes the next available pre-service training. The provider shall sign a written agreement to this effect. A provider's approval shall be revoked if he does not complete the training as per the written agreement.

E. Local departments shall explain confidentiality requirements to providers and require providers keep all information regarding the child, his family and the circumstances that resulted in the child coming into care confidential.

## **22VAC40-211-70. Standards for the home of the provider.**

A. The home shall have sufficient appropriate space and furnishings for each child receiving care in the home including:

1. Space to keep clothing and other personal belongings;

2. Accessible basin and toilet facilities;

3. Comfortable sleeping furnishings;

4. Sleeping space on the first floor of the home for a child unable to use stairs unassisted, other than a child who can easily be carried; and

5. Space for recreational activities.

B. All rooms used by the child shall be heated in winter, dry, and well-ventilated.

C. Rooms used by the child shall have adequate lighting.

D. The provider shall have access to a working telephone in the home.

E. Multiple children sharing a bedroom shall each have adequate space including closet and storage space. Bedrooms shall have adequate square footage for each child to have personal space.

F. Children over the age of 16 months (infants) shall not share a bed.

G. Children over the age of two shall not share a bedroom with an adult unless the local department approves and documents a plan to allow the child to sleep in the provider's bedroom due to documented needs, disabilities or other specified conditions.

H. Children under age seven or children with significant and documented cognitive or physical disabilities shall not use the top bunk of bunk beds.

I. The home and grounds shall be free from litter and debris and present no hazard to the safety of the child receiving care.

1. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need and the local department requests such an inspection.

2. Attics or basements used by the child for any reason shall have two exits. One of the exits shall lead directly outside, and may be an escapable door or an escapable window.

3. Possession of any weapons, including firearms, in the home shall comply with federal and state laws and local ordinances. The provider shall store any firearms and other weapons with the activated safety mechanisms, in a locked closet or cabinet. Ammunition shall be stored in a separate and locked area. The key or combination to the locked closet or cabinet shall be maintained out of the reach of all children in the home.

4. Providers shall ensure that household pets are not a health or safety hazard in accordance with state laws and local ordinances and the local department shall request verification of provider compliance.

5. Providers shall keep cleaning supplies and other toxic substances stored away from food and locked as appropriate.

6. All homes shall have an ABC class fire extinguisher.

7. Every home shall have an operable smoke detector, the specific requirements of which shall be coordinated through the local fire marshal. If a locality does not have a local fire marshal, the state fire marshal shall be contacted.

J. The number of children placed in the provider's home shall be determined by the local department based, on but not limited to, the following considerations:

1. The physical accommodations of the home;

2. The capabilities and skills of the provider to manage the number of children;

3. The needs and special requirements of the child;

4. Whether the child's best interest requires placement in a certain type of home (for example, a home with no young children or a home with no other child);

5. Whether any individuals in the home, including the provider's children, require special attention or services of the provider that interfere with the provider's ability to ensure the safety of all children in the home; and

6. The foster care provider is also a day care provider.

K. During the approval process, the provider shall develop a written emergency plan that includes, but is not limited to, fire and natural disasters. The plan shall include:

1. How the provider plans to maintain the safety and meet the needs of the child in their home during a disaster;

2. How the provider shall evacuate the home, if necessary, in a disaster; and

3. How the provider shall relocate in the event of a large scale evacuation.

Resource or foster parents shall arrange for responsible adults to be available who can serve in the caretaker's role in case of an emergency. If the planned or long-term absence of the provider is required, the local department shall be notified of and approve any substitute arrangements the provider wishes to make.

## **22VAC40-211-80. Standards of care for continued approval.**

A. The provider shall provide care that does not discriminate on the basis of race, color, sex, national origin, age, religion, political beliefs, sexual orientation, disability, or family status.

B. The provider shall ensure the child receives meals and snacks appropriate to his daily nutritional needs. The child

shall receive a special diet if prescribed by a licensed health care provider or designee or in accordance with religious or ethnic requirements or other special needs.

C. The provider shall ensure that he can be responsive to the special mental health or medical needs of the child.

D. The provider shall establish rules that encourage desired behavior and discourage undesired behavior. The provider shall not use corporal punishment or give permission to others to do so and shall sign an agreement to this effect.

E. The provider shall provide clean and seasonal clothing appropriate for the age and size of the child.

F. If a provider regularly transports the child, the provider must have a valid driver's license and automobile liability insurance. These will be checked at approval and re-approval but verification may be required at any time deemed necessary.

G. The vehicle used to transport the child shall have a valid license and inspection sticker.

H. Providers and any other adults who transport children shall use child restraint devices in accordance with requirements of Virginia law.

## **22VAC40-211-90. Allowing a variance.**

A. The local department may request and the provider may receive a variance from the department on a standard if the variance does not jeopardize the safety and proper care of the child or violate federal or state laws or local ordinances.

B. If a provider is granted a variance and is in compliance with all other requirements of this chapter, the provider is considered fully approved.

C. Any variances granted must be reviewed on an annual basis by the department.

## **22VAC40-211-100. Monitoring and reapproval of providers.**

A. The local department's representative shall visit the home of the approved provider as often as necessary but at least quarterly to provide support to and monitor the performance of the provider and shall document these visits in the provider record.

B. The re-approval process shall include:

1. A review of the previous home approval information;

2. Updating any information that has changed and a consideration of new information since the previous approval;

3. Completing all state criminal record and child protective services background checks;

4. Obtaining the results of a new tuberculosis screening;

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# Regulations

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5. Reviewing the confidentiality and the corporal punishment requirements and completing new confidentiality and corporal punishment agreements;

6. A reassessment of the above information to determine reapproval; and

7. A home study addendum indicating that the above requirements were met.

C. If monitoring efforts indicate that significant changes in the circumstances of the provider would impact the conditions of their approval have occurred, an addendum shall be completed and included with home study.

D. The home study addendum shall contain all department-required information and be documented by a combination of narrative and other data collection formats, and shall be signed and dated by the individual completing the addendum and the director of the local department or his designee.

## **22VAC40-211-110. Provider's right to grieve.**

A. The applicant shall have the right to grieve the actions of the local department to the local board on issues related to their application to become a resource, foster and/or adoptive home provider.

B. Decisions on the placement of a specific child with a provider are not subject to grievance. The local board shall have the final authority to determine appropriate placement for children pursuant to §16.1-278.2 of the Code of Virginia. Decisions regarding final adoptive placements are made by the circuit court pursuant to Chapter 12 (§63.2-1200 et seq.) of Title 63.2 of the Code of Virginia.

VA.R. Doc. No. R07-736; Filed July 14, 2008, 1:59 p.m.

## **Final Regulation**

**Title of Regulation:** **22VAC40-690. Virginia Child Care Provider Scholarship Program (amending 22VAC40-690-20, 22VAC40-690-30, 22VAC40-690-40, 22VAC40-690-55, 22VAC40-690-65).**

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

**Effective Date:** October 1, 2008.

**Agency Contact:** Zeld Boyd, Program Development Consultant, Department of Social Services, Division of Child Care and Development, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7616, FAX (804) 726-7655, TTY (800) 828-1120, or email zelda.boyd@dss.virginia.gov.

### **Summary:**

*The amendments (i) allow scholarship applicants to obtain applications from the private vendor that administers this program for the Department of Social Services (DSS); (ii) give priority to applications for scholarship from individuals who already work in child care; (iii) tighten*

*restrictions on future scholarship moneys for individuals who fail to complete or pass scholarship funded classes; and (iv) distribute written policies and procedures, which will replace written agreements that are currently required between DSS and colleges and universities that have five or more scholarship recipients enrolled, to all colleges and universities that participate in this scholarship program.*

**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.

## **22VAC40-690-20. Application process.**

A. All persons interested in obtaining a scholarship must submit a scholarship application form to the Virginia Department of Social Services or its designee as indicated on the application.

Note: Applications are available through the Virginia Department of Social Services or the designated third-party administrator.

B. A separate application must be submitted for each semester.

C. Only complete applications, both initial and resubmitted, received by the deadline indicated on the application shall be considered.

D. Applicants shall verify that the selected courses are being offered by the selected college or university for the applicable semester prior to applying for scholarships.

E. The selection of courses or colleges and universities may not be changed once the scholarship has been awarded unless the selected class is full or has been cancelled.

## **22VAC40-690-30. Selection and eligibility.**

~~A. Applications will be processed and scholarships awarded in order of date received until all available funds designated for the semester have been obligated or the application deadline has occurred, whichever comes first. Priority will be given to applicants currently employed in the field of child care. If funds remain available, the applications will be processed and scholarships awarded in order of date received.~~

B. In order for an applicant to be eligible for a scholarship, he must meet all of the following criteria. The applicant must:

1. Be one of the following:

a. An employee of a child care program located in Virginia; or

b. Domiciled in Virginia as defined in §23-7.4 of the Code of Virginia and (i) employed in a child care program outside of Virginia or (ii) have declared an intent to become employed in child care.

2. Select a department-approved course for which he has not previously received scholarship funds; and

3. Have no more than ~~three occurrences~~ one occurrence of the following for courses for which the applicant received a Virginia Child Care Provider Scholarship:

- a. Did not register for the course after receiving an award;
- b. Did not complete the course and received a grade of "W" for withdrawal; or
- c. Did not receive a passing grade.

In the event of such an occurrence, the department will not award future scholarships to an individual until the applicant reimburses the state for the course(s) tuition and fees that were paid to the college or university on behalf of the applicant.

C. An applicant does not have to be enrolled in or have already taken a course in early childhood education or a related major to be eligible for a scholarship.

D. Scholarships will only be awarded if the department has adequate information to process scholarship requests. The department must have received final course grades and payment information on courses that have been previously approved for scholarships. In addition, scholarships will be awarded on a conditional basis for those persons who are in jeopardy of becoming ineligible to receive a scholarship as specified in subdivision B 3 of this section. In these instances, the department will review enrollment and grade information when provided by the institution for the current enrollment period and if the applicant is in compliance with subdivision B 3 of this section, the scholarship will be fully awarded.

E. The scholarship will only pay tuition and the technology fee for each course.

F. Applicants shall not receive scholarships for more than two courses per semester.

G. Scholarships shall not be transferred between semesters or individuals.

H. Scholarships are awarded only for courses approved by the department. The department will determine whether a course meets the definition of a "course" as defined in 22VAC40-690-10.

I. Recipients may receive a total lifetime award of no more than the average tuition for eight community college courses or their monetary equivalent.

J. A recipient may use scholarship funds to attend any combination of Virginia public or private accredited two-year or four-year institutions over a period of time.

K. All applicants will be notified in writing regarding the acceptance or denial of their application.

**22VAC40-690-40. College and university agreements.**

A. Colleges and universities will be notified in writing when scholarships are awarded to applicants planning to attend their institutions.

B. The department shall ~~enter into a written agreement with~~ provide written procedures to all colleges and universities that ~~ordinarily have five or more students per semester~~ any student using scholarship funds regarding the operation of the scholarship program. The ~~agreement~~ procedures shall address the areas of, but not be limited to, verification of Virginia residency, billing procedures, and provision of final course grades. Specifically, these institutions shall:

- 1. Determine whether applicants that are not employed in child care programs located in Virginia are domiciled in Virginia as defined in §23-7.4 of the Code of Virginia and provide the department with verification of such;
- 2. Provide the department each semester, but no later than at the time of billing, with the tuition rate category of each person for which the institution plans to bill or is billing the scholarship program.
- 3. Submit one bill to the department per institution per semester after the college's or university's published add/drop period has occurred. Colleges and universities shall submit a request for payment prior to the end of the semester for which the scholarship was awarded. Such request must be in a department-approved format; and
- 4. Provide the department with final course grades for classes paid for by the scholarship program within one month following the end of each semester.

C. All other eligible Virginia public and private colleges and universities may ~~enter into an agreement~~ follow the procedures as outlined in subsection B of this section or place the responsibility on the student to seek reimbursement from the department.

**22VAC40-690-55. Disbursement of funds.**

For those institutions ~~that have an agreement with the department~~ participating in the tuition reimbursement process, funds will be disbursed to the colleges and universities upon receipt of an ~~Interagency Transfer (IAT)~~ or invoice in accordance with the Commonwealth Accounting Policies and Procedures. In the event that ~~the department does not have a written agreement with~~ a college or university does not choose to participate in the tuition reimbursement process, the funds will be disbursed to the recipient upon proof of tuition payment and course enrollment through the end of the college's or university's published add/drop period.

**22VAC40-690-65. Recipient responsibilities.**

A. A recipient must submit final course grades for classes paid by the Virginia Child Care Provider Scholarship



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# Regulations

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Program to the department within one month of completion of the course unless the college or university does so.

Note: All colleges and universities are requested to provide final course grades to the department for the classes paid by the scholarship program as outlined in 22VAC40-690-40 B 4. Grades will be used to determine eligibility as outlined in 22VAC40-690-30 B 3.

B. By accepting the award, the recipient agrees to participate in any surveys conducted by the department regarding the scholarship program and comply with any requests for additional information as stated in 22VAC40-690-60.

C. The recipient is responsible for all expenses related to taking the courses with the exception of the amount of the award, which only pays for tuition and the technology fee. The total lifetime award will pay the ~~entire~~ tuition and technology fee for a maximum of eight courses at the community colleges at the in-state tuition rate or the dollar equivalent of the total lifetime award, whichever comes first. Recipients ~~who attend other types of institutions or are not eligible for in state tuition rates~~ shall be required to pay any additional tuition and technology fees that exceed the total lifetime award. Additional expenses for all recipients include, but are not limited to, other college or university fees, books, transportation, and child care.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Virginia Child Care Provider Scholarship Program Application ~~Form to Attend Virginia's Public and Private Colleges and Universities~~, Form # 032-05-032/7 (rev. 6/02) 032-05-0032-03 [ (rev. 7/07 eff. 3/08 )].

VA.R. Doc. No. R07-214; Filed July 14, 2008, 2:00 p.m.

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Notice of Public Hearing

Pursuant to §3.1-188.23 of the Code of Virginia, the Commissioner of Agriculture and Consumer Services has issued a temporary (90-day) quarantine relating to the emerald ash borer (*Agrilus planipennis*). A copy of the temporary quarantine is printed below. If it appears that a quarantine for more than 90 days will be necessary, §3.1-188.23 provides that the Board of Agriculture and Consumer Services shall hold a public hearing on extending the commissioner's temporary quarantine. The Board of Agriculture and Consumer Services will hold such a public hearing at 2 p.m., August 19, 2008, at the Hilton Garden Inn Suffolk and Suffolk Conference Center, 100 East Constance Road, Suffolk, Virginia 23434.

For further information, please contact Frank Fulgham, Program Manager, Office of Plant and Pest Services, 102 Governor Street, Room LL55, Richmond, Virginia 23219; via telephone at (804) 786-3515; hearing impaired (800) 828-1120; FAX (804) 371-7793; or email at frank.fulgham@vdacs.virginia.gov.

### Virginia Emerald Ash Borer Quarantine for Enforcement of the Virginia Pest Law

Statutory authority: §3.1-188.23 of the Code of Virginia.

#### §1. Declaration of quarantine.

A quarantine is hereby established to regulate the movement of certain articles capable of transporting the highly destructive pest of ash (*Fraxinus* spp.) known as the emerald ash borer, *Agrilus planipennis* (Fairemaire) into uninfested or unregulated areas of the state, unless such articles comply with the conditions specified herein.

#### §2. Purpose of quarantine.

The emerald ash borer is an introduced beetle that specifically attacks and kills ash trees. It has become established in Fairfax County, Virginia, and has the potential to spread to uninfested counties by both natural means and humans moving infested articles. The purpose of this quarantine is to prevent the artificial spread of the emerald ash borer to uninfested areas of the state by regulating the movement of those articles that pose a significant threat of transporting the emerald ash borer.

#### §3. Definitions.

The following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Certificate" means a document issued by an inspector or any other person operating in accordance with a compliance

agreement to allow the movement of regulated articles to any destination.

"Compliance agreement" means a written agreement between a person engaged in growing, handling, receiving or moving regulated articles and the Virginia Department of Agriculture and Consumer Services, the United States Department of Agriculture, or both, wherein the former agrees to comply with the requirements of the compliance agreement.

"Emerald ash borer" means the live insect known as the emerald ash borer, *Agrilus planipennis* (Fairemaire), in any life stage (egg, larva, pupa, adult).

"Infestation" means the presence of the emerald ash borer or the existence of circumstances that make it reasonable to believe that the emerald ash borer is present.

"Inspector" means any employee of the Virginia Department of Agriculture and Consumer Services, or other person authorized by the commissioner to enforce the provisions of the quarantine or regulation.

"Limited permit (permit)" means a document issued by an inspector or other person operating in accordance with a compliance agreement to allow the movement of regulated articles to a specific destination.

"Moved (move, movement)" means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

"Person" means any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

"Virginia Pest Law" means the statute set forth in Article 6 (§3.1-188.20 et seq.) of Title 3.1 of the Code of Virginia.

#### §4. Regulated articles.

The following articles are regulated under the provisions of this quarantine, and shall not be moved out of any regulated area within Virginia, except in compliance with the conditions prescribed in this quarantine:

1. The emerald ash borer in any life stage.
2. Firewood of all hardwood (nonconiferous) species.
3. Ash (*Fraxinus* spp.) nursery stock.
4. Green (nonheat treated) ash lumber.
5. Other living, dead, cut, or fallen material of the genus *Fraxinus*, including logs, stumps, roots, branches, and composted and uncomposted wood chips.

#### §5. Regulated areas.

The following areas in Virginia:

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## General Notices/Errata

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The entire county of:

Arlington  
Fairfax  
Fauquier  
Loudoun  
Prince William

The entire independent cities of:

Alexandria  
Fairfax City  
Falls Church  
Manassas  
Manassas Park

### **§6. Conditions governing the intrastate movement of regulated articles.**

A. Movement within regulated areas – Movement of a regulated article solely within the regulated area is allowed without restriction.

B. Any regulated article may be moved intrastate from a regulated area only if moved under the following conditions:

1. With a certificate or limited permit issued and attached in accordance with §7 and §10 of this quarantine.
2. Without a certificate or limited permit, if:
  - a. The points of origin and destination are indicated on a waybill accompanying the regulated article; and
  - b. The regulated article, if moved through the regulated area during the period of April 1 through September 30, is moved in an enclosed vehicle or is completely covered to prevent access by the emerald ash borer; and
  - c. The regulated article is moved directly through the regulated area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by the emerald ash borer; and
  - d. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.
3. With a limited permit issued by the Commonwealth if the regulated article is moved:
  - a. By a state or federal agency for experimental or scientific purposes;
  - b. Under conditions, specified on the permit, which the commissioner has found to be adequate to prevent the spread of the emerald ash borer; and
  - c. With a tag or label, bearing the number of the permit issued for the regulated article, attached to the outside of the container of the regulated article or attached to the

regulated article itself, if the regulated article is not in a container.

### **§7. Issuance and cancellation of certificates and limited permits.**

A. Certificates may be issued by an inspector or any person operating under a compliance agreement for the movement of regulated articles to any destination within Virginia when:

1. The articles have been examined by the inspector and found to be apparently free of the emerald ash borer;
2. The articles have been grown, produced, manufactured, stored or handled in such a manner that, in the judgment of the inspector, their movement does not present a risk of spreading the emerald ash borer;
3. The regulated article is to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the emerald ash borer; and
4. The regulated article is eligible for unrestricted movement under all other state or federal domestic plant quarantines and regulations applicable to the regulated articles.

B. Limited permits may be issued by an inspector for the movement of regulated articles to specific destinations within Virginia if:

1. The regulated article is apparently free of emerald ash borer, based on inspection; or the article has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the Virginia Department of Agriculture and Consumer Services, prevents the article from presenting a risk of spreading the emerald ash borer; or
2. The regulated article is to be moved intrastate to a specified destination under conditions which specify the limited handling, utilization, processing or treatment of the articles, when the inspector determines that such movement will not result in the spread of the emerald ash borer because the life stage(s) of the insect will be destroyed by such specified handling, utilization, processing or treatment; and
3. The regulated article is to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the emerald ash borer; and
4. The regulated article is eligible for interstate movement under all other state or federal domestic plant quarantines and regulations applicable to the regulated article.

C. Certificates and limited permits for use for intrastate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person

operating under a compliance agreement may issue a certificate for the intrastate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with subsection A of this section. A person operating under a compliance agreement may issue a limited permit for intrastate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with subsection B of this section.

D. Any certificate or limited permit that has been issued or authorized may be withdrawn by the inspector orally, or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions for the use of the certificate or limited permit or with any applicable compliance agreement. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow.

### **§8. Compliance agreements and cancellation.**

A. Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this quarantine. The agreement shall stipulate that safeguards will be maintained against the establishment and spread of infestation, and will comply with the conditions governing the maintenance of identity, handling, and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers.

B. Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this quarantine. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow.

### **§9. Assembly and inspection of regulated articles.**

A. Any person (other than a person authorized to issue certificates or limited permits under §7) who desires to move a regulated article intrastate accompanied by a certificate or limited permit shall apply for inspection as far in advance as possible, but at least five business days before the services are needed.

B. The regulated article must be assembled at the place and in the manner the inspector designates as necessary to facilitate inspection and comply with this quarantine. The regulated article shall be safeguarded from infestation.

### **§10. Attachment and disposition of certificates and limited permits.**

A. A certificate or limited permit required for the intrastate movement of a regulated article must be attached, at all times

during the intrastate movement, to the outside of the container containing the regulated article, or to the regulated article itself, if not in a container. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

B. The certificate or limited permit for the intrastate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article. A copy of the certificate and/or limited permit must be retained by the sender of the article(s) at the place of origin.

### **§11. Inspection and disposal of regulated articles and pests.**

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and emerald ash borers as provided in the Virginia Pest Law under which this quarantine is issued.

### **§12. Nonliability of the department.**

The Virginia Department of Agriculture and Consumer Services shall not be liable for any costs incident to inspections required under the provisions of the quarantine and regulations, other than for the services of the inspector.

This Temporary Quarantine becomes effective on July 21, 2008, and shall continue for a period not to exceed 90 days.

Issued on July 21, 2008, in Richmond, Virginia.

/s/ Todd P. Haymore

Commissioner of Agriculture and Consumer Services

## **VIRGINIA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION PROGRAM**

### **Changes to Program Guidelines**

Notice is hereby given that the Virginia Birth-Related Neurological Injury Compensation Program seeks comment on proposed changes to the program guidelines. The proposed changes may be viewed on the program's website at [www.vabirthinjury.com](http://www.vabirthinjury.com) on the "Claimants/Families" page. A copy of the proposed changes also is available for inspection during normal business hours at the program's office located at 7501 Boulders View Drive, Suite 210, Richmond, VA 23225. The program also will provide a copy in response to written requests. All comments must be submitted in written form and may be directed to the board of directors at the above address. Comments also may be emailed to [board@vabirthinjury.com](mailto:board@vabirthinjury.com). All comments must include the name, address and telephone number of the submitting party. A meeting to receive public comments will be held September 8, 2008, from 10 a.m. to 12 p.m. at the Holiday

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## General Notices/Errata

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Inn Select Koger South, 10800 Midlothian Turnpike, Richmond, VA. This comment period ends September 15, 2008.

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Proposed Consent Order - Baltimore Tank Lines

An enforcement action has been proposed for Baltimore Tank Lines, Inc. for alleged violations in Alexandria, Virginia stemming from a fuel oil spill at the Mirant Potomac River Generating Station. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Stephanie Bellotti will accept comments by email at [sbellotti@deq.virginia.gov](mailto:sbellotti@deq.virginia.gov), FAX (703) 583-3821, or postal mail Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from August 5, 2008, through September 4, 2008.

#### Proposed Consent Order - Leisure Capital Corporation

An enforcement action has been proposed for Leisure Capital Corporation for alleged violations in Louisa County at the Shenandoah Crossing Sewage Treatment Plant. The consent order describes a settlement to resolve permit effluent violations at the Shenandoah Crossing Sewage Treatment Plant. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Stephanie Bellotti will accept comments by email at [sbellotti@deq.virginia.gov](mailto:sbellotti@deq.virginia.gov), FAX (703) 583-3801, or postal mail, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from August 5, 2008, through September 4, 2008.

#### Proposed Consent Order - South Fork Shenandoah River

An enforcement action has been proposed for the Town of Elkton for alleged violations in Rockingham County. A proposed consent order describes a settlement to resolve alleged operational violations and unauthorized discharges to the South Fork Shenandoah River. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Steven W. Hetrick will accept comments by email [swhetrick@deq.virginia.gov](mailto:swhetrick@deq.virginia.gov), FAX (540-574-7878) or postal mail Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801 from August 4, 2008, to September 3, 2008.

#### Total Maximum Daily Load - Smith Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a total maximum daily load implementation

plan (TMDL IP) for Smith Creek in Rockingham and Shenandoah counties. The plan will be developed to implement bacteria and sediment TMDLs that were developed for Smith Creek in 2004. EPA approved these TMDLs on June 29, 2004.

Virginia's 1997 Water Quality Monitoring, Information, and Restoration Act (§§62.1-44.19:4 through 62.1-44.19:8 of the Code of Virginia), or WQMIRA, requires the Commonwealth to develop TMDL IPs for water bodies that have EPA-approved TMDLs. DEQ and DCR are fulfilling this requirement in the Smith Creek watershed, and seek public input on the development of the plan.

The first public meeting on the development of this TMDL IP will be held on Wednesday, August 6, 2008, 7 p.m. at the New Market Town Office Building, 9418 John Sevier Road, New Market, Virginia.

The public comment period for the first public meeting will end on September 8, 2008. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Robert Brent, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, or email [rbrent@deq.virginia.gov](mailto:rbrent@deq.virginia.gov).

### DEPARTMENT OF HEALTH

#### Drinking Water State Revolving Fund Program

The Virginia Department of Health (VDH) received numerous loan requests and set-aside suggestions following our announcement in December 2006, of funds available from the Drinking Water State Revolving Fund Program. Through the Safe Drinking Water Act, Congress authorizes capitalization grants to the states but authorization has not been finalized.

The VDH's Office of Drinking Water (ODW) has prepared a draft intended use plan (IUP) using information submitted via the loan requests and set-aside suggestions. This IUP is for your review and comment. The document dated December 29, 2006, and entitled "Virginia Drinking Water State Revolving Fund Program – Program Design Manual" is a part of the intended use plan. This document was mailed in our December announcement. The draft IUP is available at [www.vdh.virginia.gov/drinkingwater/financial](http://www.vdh.virginia.gov/drinkingwater/financial).

As previously announced, the VDH will hold a public meeting. The meeting will be on Wednesday, August 27, 2008, from 8:30 a.m. to 10:30 a.m. at the Office of Drinking Water East Central Field Office, 300 Turner Road, Richmond, VA 23225. In addition, comments from the public are to be postmarked by Wednesday, September 3, 2008.

If you plan to attend, please contact Theresa Hewlett at (804) 864-7501 by the close of business on Friday, August 22, 2008, so that we may properly plan the meeting.

Please direct your requests for information and forward written comments to Steven D. Pellei, P. E., Virginia Department of Health, Division for Construction Assistance, Planning, and Policy, Office of Drinking Water, James Madison Building, Room 622, 109 Governor Street, Richmond VA 23219, telephone (804) 864-7501, FAX (804) 864-7521.

## STATE LOTTERY DEPARTMENT

### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on July 17, 2008. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Thirty (08)

Virginia's Instant Game Lottery 1037; "Bingo Night" (effective 7/14/08)

Director's Order Number Thirty-One (08)

Virginia's Instant Game Lottery 1060; "Good Luck Tripler" (effective 7/14/08)

Director's Order Number Thirty-Two (08)

Virginia's Instant Game Lottery 1061; "Dazzler Jewels" (effective 7/14/08)

Director's Order Number Thirty-Three (08)

Virginia's Instant Game Lottery 1062; "\$120 Million Cash Blowout" (effective 7/14/08)

Director's Order Number Thirty-Four (08)

Virginia's Instant Game Lottery 1065; "Jewel 7's" (effective 7/14/08)

Director's Order Number Thirty-Five (08)

Virginia's Instant Game Lottery 1066; "Triple Dough" (effective 7/14/08)

Director's Order Number Thirty-Six (08)

Virginia's Instant Game Lottery 1067; "Poker Face" (effective 7/14/08)

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

### Variance Notice

The State Human Rights Committee considered a request for variance to the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services at its meeting on August 1, 2008, at the Region Ten CSB Administrative Offices, Charlottesville, Virginia 22903.

Request for approval of a variance was considered from Western State Hospital (12VAC35-115-110, Use of Seclusion, Restraint and Time Out).

## STATE WATER CONTROL BOARD

### Guidance Document

This guidance memo replaces Guidance Memo No. 03-2011 and 03-2011 Amendment 1, the implementation guidance for the reissuance of General Permit VAG11. On April 10, 2008, the State Water Control Board adopted amendments to the General VPDES Permit Regulation for Concrete Products Facilities, 9VAC25-193, which modified General Permit VAG11. These modifications are effective June 11, 2008. Copies of the amended permit regulation, fact sheet, modified registration statement, modified general permit and other items are attached. The purpose of this guidance memo is to identify changes that have been made to the General Permit VAG11, to provide DEQ staff with guidance on implementation of these changes and to provide guidance on aspects of the permit that have raised questions.

The guidance document can be found at <http://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=3686>.

Contact Information: Elleanore Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, or email [emdaub@deq.virginia.gov](mailto:emdaub@deq.virginia.gov).

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

### Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the

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# General Notices/Errata

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Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked 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.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

## ERRATA

### BOARD OF PSYCHOLOGY

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

Publication: 24:23 VA.R. 3223-3224 July 21, 2008.

Corrections to Proposed Regulation:

Page 3223, the following summary of the proposed regulation was inadvertently omitted:

Summary:

*The proposed action reduces the number of continuing education hours that must be gained face-to-face, includes real-time interactive hours as face-to-face, recognizes the education value in preparation for presentations or publication, expands the listing of approved providers, and eliminates the process and fee for board approval of individual courses and providers.*

Page 3224, after VA.R. Doc. No. change "R07-240" to "R06-216"

VA.R. Doc. No. R06-216

### DEPARTMENT OF TRANSPORTATION

Title of Regulation: **24VAC30-155. Traffic Impact Analysis Regulations (amending 24VAC30-155-10, 24VAC30-155-40, 24VAC30-155-50, 24VAC30-155-60, 24VAC30-155-70, 24VAC30-155-80).**

Publication: 24:23 VA.R. 3290-3304 July 21, 2008.

Correction to Final regulation:

Page 3303, 24VAC30-155-80 B, add subdivision C 5 on the second and the last lines. Subsection B should read as follows:

B. Proposals containing supplemental traffic analysis as described in subdivisions C 1, 2, and 5 of 24VAC30-155-50. No fee shall be charged for the review of a subdivision plat, site plan, or plan of development submission that properly includes a supplemental traffic analysis submitted under subdivisions C 1, 2, and 5 of 24VAC30-155-50.

VA.R. Doc. No. R08-1050