



# Virginia Register of Regulations

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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**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **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: **John S. Edwards**, Chairman; **William R. Janis**, Vice Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Jane M. Roush**; **Patricia L. West**.

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 2010 through August 2011

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
26:24	July 14, 2010	August 2, 2010
26:25	July 28, 2010	August 16, 2010
26:26	August 11, 2010	August 30, 2010
27:1	August 25, 2010	September 13, 2010
27:2	September 8, 2010	September 27, 2010
27:3	September 22, 2010	October 11, 2010
27:4	October 6, 2010	October 25, 2010
27:5	October 20, 2010	November 8, 2010
27:6	November 3, 2010	November 22, 2010
27:7	November 16, 2010 ( <b>Tuesday</b> )	December 6, 2010
27:8	December 1, 2010	December 20, 2010
27:9	December 14, 2010 ( <b>Tuesday</b> )	January 3, 2011
27:10	December 29, 2010	January 17, 2011
27:11	January 12, 2011	January 31, 2011
27:12	January 26, 2011	February 14, 2011
27:13	February 9, 2011	February 28, 2011
27:14	February 23, 2011	March 14, 2011
27:15	March 9, 2011	March 28, 2011
27:16	March 23, 2011	April 11, 2011
27:17	April 6, 2011	April 25, 2011
27:18	April 20, 2011	May 9, 2011
27:19	May 4, 2011	May 23, 2011
27:20	May 18, 2011	June 6, 2011
27:21	June 1, 2011	June 20, 2011
27:22	June 15, 2011	July 4, 2011
27:23	June 29, 2011	July 18, 2011
27:24	July 13, 2011	August 1, 2011
27:25	July 27, 2011	August 15, 2011
27:26	August 10, 2011	August 29, 2011

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF COUNSELING

#### Initial Agency Notice

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

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

Name of Petitioner: Ms. Corinne Schuman.

Nature of Petitioner's Request: To amend regulations to separate the application fee and the licensing fee and allow the licensing fee to be refundable if an applicant is unable to complete the licensure process.

Agency's Plan for Disposition of the Request: The petition will be published in the Register of Regulations and circulated to interested parties for comment until September 1, 2010. Following the comment period, the board will consider the request for amendments at its next meeting scheduled for November 5, 2010.

Public Comment Deadline: September 1, 2010.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4441, FAX (804) 527-4435, or email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

VA.R. Doc. No. R10-74; Filed July 6, 2010, 4:20 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 1. ADMINISTRATION

### DEPARTMENT OF GENERAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of General Services intends to consider amending the following regulations: **1VAC30-40, Regulations for the Certification of Laboratories Analyzing Drinking Water.** The purpose of the proposed action is to update the regulation to incorporate the most recent federal guidance used to certify drinking water laboratories, the Environmental Protection Agency's Manual for the Certification of Laboratories Analyzing Drinking Water, Fifth Edition (January 2005) and Supplement 1 to the Fifth Edition (June 2008). The proposed action will also revise the fees charged under the regulation. These fees have not changed since 1994 and need to be brought in line with the current costs of the program.

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

Statutory Authority: §§ 2.2-1102 and 2.2-1105 of the Code of Virginia.

Public Comment Deadline: September 1, 2010.

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

VA.R. Doc. No. R10-2245; Filed July 12, 2010, 10:10 a.m.

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### STATE BOARD OF JUVENILE JUSTICE

#### 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 Juvenile Justice intends to consider amending the following regulations: **6VAC35-20, Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs,** to (i) ensure the process to certify the programs and facilities regulated by the board is the most efficient and effective, (ii) conform definitions to those in other board regulations, (iii) remove definitions no longer used in the regulation, (iv) streamline and reorganize the regulation, (v) reduce the number of required onsite auditing and monitoring visits that occur during the certification cycle, (vi) add a self-assessment for facilities during nonaudit years, and (vii) add a separate section for audits of programs funded by the Virginia

Juvenile Community Crime Control Act and Delinquency Prevention and Youth Development Act.

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

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

Public Comment Deadline: September 1, 2010.

Agency Contact: Janet VanCuyk, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-4097, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

VA.R. Doc. No. R10-2208; Filed July 6, 2010, 10:37 a.m.

## FORENSIC SCIENCE BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Forensic Science Board intends to consider promulgating the following regulations: **6VAC40-60, DNA Data Bank Regulations.** The purpose of the proposed action is to develop regulations for obtaining information from the Virginia DNA data bank and procedures for verifying the identity and authority of persons requesting information from the Virginia DNA data bank.

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

Statutory Authority: § 19.2-310.5 of the Code of Virginia.

Public Comment Deadline: September 1, 2010.

Agency Contact: Stephanie Merritt, Department Counsel, Department of Forensic Science, 700 North Fifth Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email stephanie.merritt@dfs.virginia.gov.

VA.R. Doc. No. R10-2425; Filed July 8, 2010, 10:46 a.m.

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Withdrawal of Notice of Intended Regulatory Action

The State Board of Education has withdrawn the Notice of Intended Regulatory Action for **8VAC20-100, Regulations Governing Literary Loan Applications in Virginia,** which was published 23:22 VA.R. 3674 July 9, 2007. The action is withdrawn because the revisions to ensure alignment with the Code of Virginia and appropriate and necessary requirements are already in place.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Communications, Department of Education, P.O. Box

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# Notices of Intended Regulatory Action

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2120, Richmond, VA 23218-2120, 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. R07-280; Filed July 6, 2010, 2:25 p.m.

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## TITLE 9. ENVIRONMENT

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Environmental Quality intends to consider promulgating the following regulations: **9VAC15-50, Small Renewable Offshore Wind Energy Projects Permit Regulation**. The purpose of the proposed action is to establish a permit by rule for small offshore wind renewable energy projects, including whether offshore and coastal wind projects are likely to have a significant adverse impact on natural resources; and, if so, then how the department might address potential environmental impacts, mitigation plans, facility site planning, public participation, permit fees, interagency consultations, compliance, enforcement, and other topics that may be brought up during the public comment period.

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

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

Public Comment Deadline: September 1, 2010.

Agency Contact: Carol C. Wampler, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4579, FAX (804) 698-4346, or email [carol.wampler@deq.virginia.gov](mailto:carol.wampler@deq.virginia.gov).

VA.R. Doc. No. R10-2505; Filed July 13, 2010, 11:39 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Environmental Quality intends to consider promulgating the following regulations: **9VAC15-60, Small Solar Renewable Energy Projects Permit Regulation**. The purpose of the proposed action is to implement 2009 state legislation requiring the Department of Environmental Quality to develop one or more permits by rule for solar energy projects with rated capacity not exceeding 100 megawatts if the department determines that a permit by rule is necessary. The permit by rule will include conditions and standards necessary to protect the Commonwealth's natural resources.

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

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

Public Comment Deadline: September 1, 2010.

Agency Contact: Carol C. Wampler, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4579, FAX (804) 698-4346, or email [carol.wampler@deq.virginia.gov](mailto:carol.wampler@deq.virginia.gov).

VA.R. Doc. No. R10-2506; Filed July 13, 2010, 11:40 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Dentistry intends to consider amending the following regulations: **18VAC60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to reorganize Chapter 20 and create new chapters for the practice of dental hygienists and dental assistants.

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

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

Public Comment Deadline: September 1, 2010.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

VA.R. Doc. No. R10-2362; Filed July 14, 2010, 11:53 a.m.

### BOARD OF NURSING

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Nursing intends to consider amending the following regulations: **18VAC90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to consider several options for nurses to demonstrate continued competency in order to renew an active license to practice.

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

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

Public Comment Deadline: September 1, 2010.

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](mailto:jay.douglas@dhp.virginia.gov).

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# Notices of Intended Regulatory Action

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VA.R. Doc. No. R10-2363; Filed July 14, 2010, 11:54 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Nursing intends to consider amending the following regulations: **18VAC90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to consider adding specificity to requirements for initial, provisional, and continued approval of nursing education programs.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Comment Deadline: September 1, 2010.

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.

VA.R. Doc. No. R10-2513; Filed July 14, 2010, 11:54 a.m.

## BOARD OF SOCIAL WORK

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Social Work intends to consider amending the following regulations: **18VAC140-20, Regulations Governing the Practice of Social Work**. The purpose of the proposed action is to revise licensure by endorsement provisions to eliminate unnecessary requirements for documentation and to clarify and revise licensure by examination and reinstatement provisions to ensure current competency.

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

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

Public Comment Deadline: September 1, 2010.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R10-2415; Filed July 14, 2010, 11:55 a.m.



## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider promulgating the following regulation: **22VAC40-181, Voluntary Registration of Family Day Homes - Requirements for Providers**; and repealing **22VAC40-180, Voluntary Registration of Family Day Homes - Requirements for Providers**. The purpose of the proposed action is to (i) repeal the current regulation, 22VAC40-180, which establishes general requirements and procedures that family day homes caring for fewer than six children must meet in order to obtain a certificate of registration from the Department of Social Services and (ii) adopt a comprehensive new regulation, 22VAC40-181, to clarify and make the requirements and procedures consistent in obtaining a certificate of registration for family day homes.

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

Statutory Authority: §§ 63.2-217 and 63.2-1704 of the Code of Virginia.

Public Comment Deadline: September 1, 2010.

Agency Contact: Debra O'Neill, Children's Program Licensing Consultant, Department of Social Services, Division of Licensing Programs, 801 East Main Street, 9th Floor, Richmond, VA 23219, telephone (804) 726-7648, FAX (804) 726-7132, TTY (800) 828-1120, or email debra.oneill@dss.virginia.gov.

VA.R. Doc. No. R10-2243; Filed July 13, 2010, 3:58 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending the following regulations: **22VAC40-661, Child Care Program**. The purpose of the proposed action is to implement a statewide child care automation system and to expedite the automation process by ensuring uniform statewide child care subsidy guidance. Uniform and consistent alignment of statewide guidance is a critical piece of the development of statewide automation for the Child Care Subsidy Program (Program). It also ensures compliance with state law and federal requirements. Program areas needing alignment include eligibility, length of time for receipt of subsidized child care, requirements related to the Division of Child Support Enforcement as they relate to the absent parent assisting with child care payments, legal age for contractual arrangements, and a standardized process for the state to recover child care subsidy overpayments to clients as well as vendors.

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## Notices of Intended Regulatory Action

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

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

Public Comment Deadline: September 1, 2010.

Agency Contact: Mary Ward, Child Care Subsidy Manager, Department of Social Services, Child Care & Early Childhood Development Division, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7638, FAX (804) 726-7655, TTY (800) 828-1120, or email [mary.ward@dss.virginia.gov](mailto:mary.ward@dss.virginia.gov).

V.A.R. Doc. No. R10-2438; Filed July 13, 2010, 4:01 p.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 5. CORPORATIONS

### STATE CORPORATION COMMISSION

#### Final 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, 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:** 5VAC5-40. Administration of the Office of the Clerk of the Commission (adding 5VAC5-40-10, 5VAC5-40-20).

**Statutory Authority:** § 13.1-1062 of the Code of Virginia.

**Effective Date:** August 1, 2010.

**Agency Contact:** Joel Peck, Clerk of the Commission, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9733, FAX (804) 371-9912, or email joel.peck@scc.virginia.gov.

#### Summary:

*Section 13.1-1062 of the Code of Virginia provides authority to the State Corporation Commission to set the schedule for assessing limited liability companies in Virginia. Currently, limited liability companies are assessed annually in July, and assessments are to be paid by the end of September. Amendments to § 13.1-1062 enacted in the 2010 Session of the General Assembly permit the commission to assess all LLCs annually in July or assess each LLC annually based on the month it was originally organized. The second enactment clause of the act requires the commission to enter an order no later than August 1, 2010, setting the schedule for assessing LLCs in Virginia. The regulation sets forth a schedule for assessing LLCs annually in July, which is current practice. The adopted regulation merely adds to the Virginia Administrative Code the same schedule that has been in statute prior to the amendments to § 13.1-1062.*

AT RICHMOND, JULY 13, 2010

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2010-00006

Ex Parte: In re: annual registration fees  
for limited liability companies

#### ORDER ADOPTING A REGULATION

On June 1, 2010, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Commission to adopt a regulation pursuant to Chapter 703 of the 2010 Virginia Acts of Assembly ("Chapter 703 of the Acts"), now codified as § 13.1-1062 of the Code of Virginia. The proposed regulation, 5 VAC 5-40-20, places in the Virginia Administrative Code the schedule by which the Commission shall assess limited liability companies in accordance with § 13.1-1062 of the Code of Virginia. The second enactment of Chapter 703 of the Acts directs the Commission to enter an order setting this schedule no later than August 1, 2010. The Order and proposed regulation were published in the Virginia Register of Regulations on June 21, 2010, and published on the Commission's website. Interested parties were afforded the opportunity to provide written comments or request a hearing on or before July 2, 2010.

No comments were filed, nor were any requests for hearing made in this matter.

NOW THE COMMISSION, upon consideration of the proposed regulation and applicable law, concludes that the proposed regulation should be adopted with an effective date of August 1, 2010.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation, 5 VAC 5-40-20, as attached hereto, is adopted effective August 1, 2010.

(2) This Order and the attached regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulation, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof shall be sent to the Clerk of the Commission, who shall forthwith mail a copy of this Order, including a copy of the attached regulation, to interested parties as he may designate.

CHAPTER 40  
ADMINISTRATION OF THE OFFICE OF THE CLERK OF  
THE COMMISSION

**5VAC5-40-10. (Reserved.)**

**5VAC5-40-20. Assessment of limited liability companies.**

Each year, the commission shall ascertain from its records each domestic limited liability company and each foreign limited liability company registered to transact business in the Commonwealth, as of July 1 of each year, and shall assess against each such limited liability company the annual registration fee imposed in subsection A of § 13.1-1062 of the Code of Virginia, and, except as provided in subsection C of § 13.1-1062, that each such limited liability company shall pay the assessment due into the state treasury on or before September 30 in each year after the calendar year in which it was formed or registered to transact business in the Commonwealth; provided that the initial annual registration fee to be paid by a domestic limited liability company created by conversion shall be due in the year after the calendar year in which it converted.

VA.R. Doc. No. R10-2454; Filed July 14, 2010, 10:00 a.m.

◆ ————— ◆  
**TITLE 18. PROFESSIONAL AND  
OCCUPATIONAL LICENSING**

**BOARD OF ACCOUNTANCY**

**Fast-Track Regulation**

Title of Regulation: **18VAC5-21. Board of Accountancy Regulations (repealing 18VAC5-21-10 through 18VAC5-21-170).**

**18VAC5-22. Board of Accountancy Regulations (adding 18VAC5-22-10 through 18VAC5-22-170).**

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 1, 2010.

Effective Date: September 16, 2010.

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Basis: Section 54.1-4402 of the Code of Virginia gives the board the responsibility of enforcing the accountancy statutes and establishing by regulation rules and procedures for the implementation of those statutes.

Purpose: The purpose of this action is to cure the considerable deficiencies in current regulations arising primarily from the comprehensive revision of the accountancy statutes in 2007. Examples of deficiencies in current regulations are:

1. All the definitions the board believes are necessary are now in the statutes. In addition, the statutes now have standards of conduct and practice that will remain evergreen. Definitions and standards of conduct and practice are therefore no longer needed in the regulations.
2. Some terms are defined differently in the statutes and the current regulations. In addition, standards of conduct and practice in the current regulations are out-of-date and therefore inconsistent with the guidance that is now in the statutes.
3. The 2007 revisions to the statutes gave the board the ability to enter into confidential consent agreements and directed the board to adopt regulations identifying the type of minor violations for which confidential consent orders may be offered and limit the number of confidential consent orders that may be offered to the same licensee in any given period.
4. The current regulations on continuing professional education are extremely difficult to understand, for example by taking inconsistent positions for categories of licensees.
5. The current regulations on continuing professional education also do not address some important issues, such as whether the holder of a Virginia license who has been exempt from the requirement to obtain continuing professional education should be required to obtain continuing professional education before he begins providing services to the public or to an employer, as those services are defined by the revised statutes.
6. Some of the current regulations were time sensitive and are no longer relevant. For example, regulations on the CPA examination before it became computer-based are no longer relevant. In addition, some of the current regulations refer to statutes that were repealed by the 2007 revisions.

The deficiencies are causing confusion among licensees and the public over how to apply the requirements of the statutes and the regulations. The new regulations will protect the public by eliminating the confusion and decreasing the risk of noncompliance.

Rationale for Fast-Track Process: The deficiencies in the current regulations are causing considerable confusion among licensees and the public over how to apply the requirements of the statutes and the regulations. This confusion among

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licensees and the public increases the risk of noncompliance and the time required to assess and enforce compliance. Deficiencies in the current regulations should therefore be cured as soon as possible.

The board set five criteria in developing the changes to the regulations to propose through the fast track regulatory process: (i) remove regulations that are now addressed by the statutes, (ii) add the emergency regulation that became effective May 14, 2009, (iii) add interpretations required as a result of the 2007 revisions to the statutes, (iv) clarify the existing guidance that continues to be applicable, and (v) eliminate the current regulations that were time sensitive and are no longer needed or that only refer to other regulations.

Removing regulations now addressed by the statutes eliminates much of the current regulations: 12 of the 17 sections of the current regulations and parts of three of the other five sections are overridden by the revised statutes. Regulations that are now addressed by the statutes are no longer applicable and should not be followed. However, the licensees and the public should not be put in the position of having to decide which regulations are still applicable and which regulations are overridden by the revised statutes. The best approach for the licensees and the public is to remove the regulations that are now addressed by the statutes.

Eleven of the 17 sections of the proposed new regulations provide interpretations required as a result of the 2007 revisions to the statutes. The interpretations are practical and generally provide for the exercise of judgment based on the underlying facts and circumstances. The board believes this best protects the public and that these interpretations are not controversial. The board also believes these interpretations are already appropriate and views the proposed new regulations as only formalizing them.

The proposed revisions to the regulations are not designed to change practice. For example, the proposed revisions do not increase the amount of continuing professional education that is required under the current regulations. In addition, a licensee will still be able to use the CPA title without obtaining continuing professional education as long as he does not provide services to the public or to an employer, as those services are defined by the revised statutes. As an observation, the revised statutes made that provision available to more licensees.

The proposed revisions to the regulations will make compliance with the statutes and regulations easier and provide flexibility. They will also substantially reduce the length of the board's regulations: the proposed new regulations are approximately one-third the length of the current regulations.

Changes that conform to these criteria can only have a positive economic effect. By eliminating the current deficiencies, the risk of noncompliance and the time required

to assess and enforce compliance will be reduced. No negative economic effects are anticipated. The Virginia Society of Certified Public Accountants, whose members comprise over a third of the approximately 22,500 persons who hold a Virginia license, submitted a letter expressing its support of the proposed new regulations.

Substance: The new regulations (i) remove regulations that are now addressed by the statutes, (ii) add the emergency regulation that became effective May 14, 2009, and expires November 13, 2010, which reduces from 150 to 120 the number of hours of education a person must have in order to take the CPA examination, (iii) add interpretations required as a result of the 2007 revisions to the statutes, (iv) clarify the existing guidance that continues to be applicable, and (v) eliminate the current regulations that were time sensitive and are no longer needed or that only referred to other regulations.

Issues: The primary advantage to the public is the elimination of the significant confusion that currently exists largely because of the inconsistencies between the statutes as they were revised in 2007 and 18VAC5-21, which is being repealed. The new regulations will make it easier for licensees to comply with the accountancy statutes and regulations and provide flexibility. The primary advantage to the agency or Commonwealth is that eliminating the confusion will reduce the number of (i) inquiries received by the board and staff about how to apply the statutes and regulations and (ii) enforcement cases. These reductions will enable the board and its staff to focus on other issues.

There are no disadvantages to the public or the Commonwealth in implementing the new regulations.

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

Summary of the Proposed Amendments to Regulation. The Board of Accountancy (Board) proposes to repeal its current regulations and promulgate replacement regulations. These proposed regulations will replace emergency regulations that expire May 13, 2010 and will incorporate statutory changes passed by the 2007 General Assembly.

Result of Analysis. The benefits likely exceed the costs for some proposed changes. Costs likely exceed benefits for at least one of the proposed changes.

Estimated Economic Impact. With one exception, the Board of Accountancy Regulations have not been amended since the General Assembly made changes to the statutes that govern licensure for accountants in 2007. Because the regulatory changes that are required or suggested by Chapter 804 of the 2007 Acts of the Assembly are extensive, the Board now proposes to completely repeal its existing regulatory chapter (18VAC5-21) and promulgate a new chapter (18VAC5-22).

Most of the changes that are now proposed by the Board are either required to make these regulations consistent with

statute, changes to the fee schedule fall into this category, or are not strictly required to conform the regulations to the statute but would likely impose minimal or no costs on any regulated entity. The Board's proposal to eliminate definitions from the regulations and, instead, refer readers to the relevant statutory definitions falls into this category. The Board's decision to eliminate definitions rather than just amending them to reflect any changes that were made by the General Assembly in 2007 is discretionary. Regulated entities may incur some minimal time costs from having to go to another source for definitions but these costs are likely outweighed by the benefits of not having conflicts between regulatory and statutory definitions if the statute should change again at some point in the future.

In addition to changes that are either required by statute or are discretionary but are unlikely to have net costs attached, the Board is proposing one change to these regulations that is discretionary and may have substantial costs attached. Current regulations delineate the circumstances under which individuals who provide services to the public or to an employer would be responsible for completing continuing professional education. Specifically, current regulations require:

...any person referring to himself as a Certified Public Accountant or "CPA," including the use of the "CPA" title on individual business cards, letterhead and all other documents and devices except the CPA wall certificate, and who is performing or offering to perform any services involving accounting skills or auditing skills, issuing reports on financial advisory or consulting services, preparing tax returns, or furnishing advice on tax matters...

for either the public or an employer to obtain 120 hours of continuing education each renewal cycle. In 2007, the General Assembly amended statutory language so that the definition of providing services using a CPA title allows the Board discretion to add other skills to the list of things that would constitute providing services and would, therefore, require individuals to complete continuing education. The Board now proposes to remove from the regulations the specific list of services that would trigger continuing education requirements. The Board proposes, instead, to generally require continuing education of any individual who holds a Virginia license and provides services to either the public or an employer using the CPA title.

Although the Board does now have the right to define any relevant skills as falling under the definition of providing services using a CPA title, removing the limiting language that lays out exactly which services will trigger continuing education requirements has the potential to subject more people to these requirements. For individuals who currently do not have to complete continuing education (CE) because they do not provide any of the services specifically listed in

current regulations, but who may have to complete CE due to a Board decision that the services that they provide falls under the other skills portion of the statute, the cost of maintaining a CPA license will increase substantially. Additionally, removing the limiting language from the regulations increases uncertainty for regulated entities because the Board will be able to change the rules these entities must abide by without going through normal regulatory procedures. The costs of this particular regulatory change for regulated entities likely outweigh the benefit of added flexibility that will accrue to the Board. Regulated entities would likely be much better off if the Board were to amend this particular part of these regulations to add to the list of services that will trigger CE as they find other skills that should be on the list rather than removing the list entirely from the regulations.

**Businesses and Entities Affected.** The Board reports that there are currently approximately 22,500 individual accountants and 1,200 accountancy firms licensed in the Commonwealth. All of these entities will be affected by these proposed regulations.

**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 impact on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

**Small Businesses: Costs and Other Effects.** Small businesses in the Commonwealth are unlikely to incur any 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 costs on account of this regulatory action.

**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

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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:

1. The Conclusion and Recommendation of the Department of Planning and Budget (DPB). In its Economic Impact Analysis (EIA) of the new regulations the Virginia Board of Accountancy (Board) is proposing:

a. DPB concludes, "In addition to changes that are either required by statute or are discretionary but are unlikely to have net costs attached, the Board is proposing one change to these regulations that is discretionary and may have substantial costs attached." That change is in the determination of whether holders of a Virginia license (licensees) are required to obtain continuing professional education.

b. DPB recommends that the Board amend the proposed regulations to require basing the determination solely on whether the licensee provides certain services.

2. The Board's Response. DPB's conclusion that the proposed change to the regulations on determining whether licensees are required to obtain continuing professional education is discretionary and may have substantial costs attached is incorrect, and its recommendation that the determination be based solely on whether licensees provide certain services is inconsistent with the accountancy statutes:

a. The current regulations on determining whether a licensee is required to obtain continuing professional education have been superseded by the revisions to the accountancy statutes that became effective July 1, 2007. The proposed change to the regulations is mandatory, not discretionary.

b. The requirements for the determination that are now prescribed by the statutes because of the 2007 revisions are less restrictive than the superseded requirements. The new requirements will not increase costs, and for some licensees will reduce costs.

c. Because of the 2007 revisions, the accountancy statutes do not permit basing the determination solely on services provided.

3. Additional Information. Two appendixes provide additional information that may be helpful.

a. Appendix A discusses the reasoning underlying the Board's response and presents a roadmap for determining whether continuing professional education is required.

b. Appendix B uses a series of practical illustrations to show how to make the determination and how the new requirements are less restrictive than the superseded requirements.

The Board would welcome the opportunity to discuss any questions or concerns.

## Appendix A - The Reasoning Underlying the Board's Response

A1. The accountancy statutes (statutes) are in Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia, and the Board's regulations (regulations) are in Chapter 21 of Agency 5, Title 18 of the Virginia Administrative Code (18VAC5-21). The current regulations that address which licensees are required to obtain continuing professional education cite as their precedent two subsections of the statutes that were repealed effective July 1, 2007. The 2007 revisions to the statutes replaced the framework for determining which licensees are required to obtain continuing professional education (framework) in the superseded statutes with a new framework.

A2. The Board's mission is to protect the public, and the Board believes continuing professional education should be required when it is necessary to protect the public. Since many licensees do not provide services to the public, the framework is structured according to two categories of services: services provided to the public and services provided to an employer.

A3. Consistent with its mission of protecting the public, the Board believes licensees who provide services to the public should be required to obtain continuing professional education. However, the number of licensees who provide services to an employer in academia, government, or industry now exceeds the number of licensees who provide services to the public. Those licensees provide a wide variety of services to their employers, and the services often do not require the use of skills a person needs to become licensed.

A4. Services provided to the public generally are three-party engagements: the licensee, the person or entity who engaged the licensee to provide the service, and one or more third-party users of the results of the service provided by the licensee. Services provided to an employer generally are two-party engagements: the licensee and the employer.

A5. While there is no bright line in applying the Board's mission to a two-party engagement, a practical approach that best protects the public is to base the determination of whether continuing professional education is required on the relative importance of the license to the employer. Two illustrations of the notion of relative importance follow.

a. If a licensee becomes a sales representative for an entity, the fact that the person is licensed is not important to the entity and requiring him to obtain continuing professional education would not be consistent with the Board's mission.

b. If a licensee becomes the chief financial officer or the internal auditor of an entity, the fact that he is licensed is important to the entity and requiring him to obtain continuing professional education would be consistent with the Board's mission.

A6. The Board established two criteria for assessing relative importance: whether the services the licensee provides to the employer require the use of skills that are relevant to determining whether the licensee should be required to obtain continuing professional education and whether the licensee uses those skills to fulfill a substantial portion of his responsibilities to the employer.

A7. The framework added to the statutes through the 2007 revisions is based on three definitions that appear in § 54.1-4400 of the Code of Virginia:

a. Continuing professional education means the education that a person obtains after passing the CPA examination and that relates to services provided to an employer in academia, government, or industry using the CPA title or to services provided to the public using the CPA title.

b. Providing services to an employer using the CPA title means providing to an entity services that require the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the Board.

c. Providing services to the public using the CPA title means providing services that are subject to the guidance of the standard-setting authorities listed in the standards of conduct and practice in subdivisions 5 and 6 of § 54.1-4413.3 of the Code of Virginia.

A8. Under this framework:

a. Continuing professional education is only required when it is necessary to protect the public.

b. Continuing professional education is considered necessary to protect the public when a licensee either:

- (1) provides services to the public or
- (2) provides services to an employer that require the substantial use of skills that are relevant to

determining whether the licensee should be required to obtain continuing professional education.

A9. The statutes do not require a licensee to obtain continuing professional education if he does not provide services to the public and he does not provide services to an employer that require the substantial use of relevant skills. However, the proposed new regulations clarify that in order for a licensee who is not required to obtain continuing professional education to begin providing these services:

a. He is required to have obtained at least 120 hours of continuing professional education prior to providing the services, including an ethics course of at least two hours.

b. Continuing professional education obtained during the three calendar years prior to the current calendar year and from the start of the current calendar year to when he begins providing the services shall be considered in determining whether the licensee has complied with that requirement.

A10. A Roadmap. A roadmap for applying the framework prescribed by the statutes follows.

a. Does the licensee provide services to the public?

(1) If the answer is yes, stop: the licensee is required to obtain continuing professional education.

(2) If the answer is no, go to the next question.

b. Does the licensee provide services to an employer in academia, government, or industry?

(1) If the answer is no, stop: the licensee is not required to obtain continuing professional education.

(2) If the answer is yes, go to the next question.

c. Do the services the licensee provides to the employer require the use of skills that are relevant to determining whether he should be required to obtain continuing professional education?

(1) If the answer is no, stop: the licensee is not required to obtain continuing professional education.

(2) If the answer is yes, go to the next question.

d. Does the licensee use those skills to fulfill a substantial portion of his responsibilities to the employer?

(1) If the answer is no, stop: the licensee is not required to obtain continuing professional education.

(2) If the answer is yes, stop: the licensee is required to obtain continuing professional education.

A11. If a licensee is not required to obtain continuing professional education:

a. He is still permitted to use the CPA title in Virginia.

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b. If he begins providing services that would require him to obtain continuing professional education, he will be subject to the continuing professional education requirements prospectively and to protect the public will also be subject to a catch-up requirement that must be met before he begins providing those services.

## Appendix B - Practical Illustrations

B1. A series of practical illustrations follows to show how to determine whether a licensee is required to obtain continuing professional education under the new requirements and how the new requirements are less restrictive than the superseded requirements.

B2. Illustration 1. The managing partner of a CPA firm holds a Virginia license and leaves the firm to become the chief executive officer of an entity. She only provides services that would be expected of a chief executive officer. None of those services requires the use of skills that would be relevant to determining whether she should be required to obtain continuing professional education. She is therefore not required to obtain continuing professional education. (The answer would have been the same under the superseded requirements.)

B3. Illustration 2. Change the facts in illustration 1 so that it later becomes apparent that the chief financial officer may leave and not prepare the annual financial statements. The licensee offers to prepare the annual financial statements if the chief financial officer leaves and a replacement cannot be found in time. Preparing financial statements requires the use of skills that are relevant to determining whether the licensee should be required to obtain continuing professional education. However, the licensee has only offered to provide the service. Only services provided are considered under the new framework. She is therefore not required to obtain continuing professional education. (The answer would have been different under the superseded requirements. Since they included offering to provide any services that require the use of accounting skills, she would have been required to obtain continuing professional education. Because the new requirements are less restrictive, the licensee is no longer required to obtain continuing professional education.)

B4. Illustration 3. Change the facts in illustration 2 so that the chief financial officer leaves, a replacement cannot be found in time, and the licensee prepares the annual financial statements. Preparing financial statements requires the use of skills that are relevant to determining whether the licensee should be required to obtain continuing professional education. However, the licensee does not use those skills to fulfill a substantial portion of her responsibilities to the employer. She is therefore not required to obtain continuing professional education. (The answer would have been different under the superseded requirements. Since they included providing any services that require the use of accounting skills, she would have been required to obtain

continuing professional education even though this was a special, one-time situation. Because the new requirements are less restrictive, the licensee is no longer required to obtain continuing professional education.)

B5. Illustration 4. The general manager of a car dealership holds a Virginia license. Each year, he prepares the dealership's federal and state income tax returns. Preparing income tax returns requires the use of skills that are relevant to determining whether the licensee should be required to obtain continuing professional education. However, the licensee does not use those skills to fulfill a substantial portion of his responsibilities to the employer. He is therefore not required to obtain continuing professional education. (The answer would have been different under the superseded requirements. Since they included preparing tax returns for an employer, he would have been required to obtain continuing professional education even though he did not use those skills to fulfill a substantial portion of his responsibilities to the employer. Because the new requirements are less restrictive, the licensee is no longer required to obtain continuing professional education.)

B6. If in addition to preparing the dealership's tax returns, the licensee also prepares income tax returns for a few relatives and friends as a side venture, he would be considered to be providing services to the public and is required to obtain continuing professional education. (The answer would have been the same under the superseded requirements.)

B7. Illustration 5. A licensee is a project manager for an entity that develops real estate. His responsibilities include analyzing potential sites for their development potential and making recommendations to the owners of the entity, preparing budgets for projects adopted, and analyzing and reporting significant variances between budgeted and actual results. The development of prospective information and the financial analyses are services that require the use of skills that are relevant to determining whether the licensee should be required to obtain continuing professional education. However, the licensee does not use those skills to fulfill a substantial portion of his responsibilities to the employer. He is therefore not required to obtain continuing professional education. (The answer would have been different under the superseded requirements. They included providing any services that require the use of accounting skills and reports on financial advisory services for an employer. Because the new requirements are less restrictive, the licensee is no longer required to obtain continuing professional education.)

B8. Illustration 6. A licensee is the development director of a not-for-profit organization. A significant part of his responsibilities is consulting with potential donors and their advisors about the income tax and estate tax planning considerations for making contributions to the organization and obtaining and allocating federal and state tax credits. Those services require the use of skills that are relevant to

determining whether the licensee should be required to obtain continuing professional education. In addition, the licensee uses those skills to fulfill a substantial portion of his responsibilities to the employer. As a practical matter, the fact that he is licensed was likely an important consideration to the organization in hiring him. He is therefore required to obtain continuing professional education. (The answer would have been the same under the superseded requirements. They included furnishing advice on tax matters for an employer.)

**Summary:**

*This regulatory action is the result of comprehensive revisions to the accountancy statutes that became effective July 1, 2007. This action (i) repeals 18VAC5-21, Board of Accountancy Regulations, in its entirety as the regulations are unnecessary, inconsistent with statute, or obsolete; (ii) adopts as a replacement 18VAC5-22, Board of Accountancy Regulations, that are consistent with changes passed by the 2007 General Assembly, and (iii) replaces emergency regulations expiring November 13, 2010.*

*The board does not intend for the replacement regulation to make any substantive changes to current practice. The replacement chapter: (i) incorporates by reference statutory definitions; (ii) does not affect fees; (iii) provides requirements for determining whether a person or entity is located in Virginia; (iv) clarifies the circumstances under which the holder of a Virginia license is subject to continuing professional education (CPE) requirements; (v) provides requirements for determining whether the principal place of business is in Virginia; (vi) provides a method for an accrediting organization that is not one of the six major accrediting organizations to demonstrate substantial equivalence to the accreditation process and standards of those organizations; (vii) retains in 18VAC5-22-70 the emergency regulation expiring November 13, 2010, regarding educational prerequisites to sit for the CPA examination through Virginia; (viii) retains generally the provisions of 18VAC5-21-30 regarding examinations but updates and simplifies the language; (ix) clarifies the CPE requirements; (x) prescribes the experience requirement that must be met prior to applying for a license; (xi) clarifies that a person is not required to notify the board that his education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license; (xii) clarifies supervision requirements; (xiii) requires that owners of a firm who are not licensees to participate in the firm's activities on a regular, continuous, and substantial basis; (xiv) requires a person who releases or authorizes the release of reports on attest services or compilation services to obtain annual CPE and requires firms providing attest or compilation services to establish policies and procedures regarding the release of, or authorization to release, the reports; (xv) requires a firm to comply with all components of its monitoring program and allows the board to waive the*

*peer review requirement or extend the time for compliance; (xvi) includes provisions for confidential consent orders; and (xvii) requires certain information to be communicated to the board during the application, peer review, or investigation process.*

**CHAPTER 22  
BOARD OF ACCOUNTANCY REGULATIONS**

**18VAC5-22-10. Definitions.**

The definitions in § 54.1-4400 of the Code of Virginia apply to these regulations.

**18VAC5-22-20. Fees.**

A. The board shall charge the following fees for services it provides:

<u>Processing an application to take the CPA examination</u>	<u>\$120</u>
<u>Processing an application for issuance of a Virginia license</u>	<u>\$24</u>
<u>Processing an application for the timely renewal of a Virginia license</u>	<u>\$24</u>
<u>Additional fee for processing an application for a license renewal that is not timely</u>	<u>\$25</u>
<u>Processing an application for reinstatement of a Virginia license</u>	<u>\$250</u>
<u>Processing an application for lifting the suspension of the privilege of using the CPA title in Virginia or for lifting the suspension of the privilege of providing attest services or compilation services for persons or entities located in Virginia</u>	<u>\$250</u>
<u>Providing an additional wall certificate</u>	<u>\$25</u>
<u>Additional fee for not using the online payment option for any service provided by the board</u>	<u>\$5</u>

B. All fees for services the board provides are due when the service is requested and are nonrefundable.

**18VAC5-22-30. Determining whether persons or entities to whom communications are made, or for whom services are provided, are located in Virginia.**

For the purpose of complying with Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia for communication to persons or entities located in Virginia or providing services for persons or entities located in Virginia, persons are considered to be located in Virginia if their primary residence for federal income tax reporting is located in Virginia, and entities are considered to be located in Virginia if they conduct any activities in Virginia.



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## **18VAC5-22-40. Determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to an employer using the CPA title.**

For the purpose of determining whether a person who holds a Virginia license is providing services to the public using the CPA title or to an employer using the CPA title, as those terms are defined in § 54.1-4400 of the Code of Virginia, because of the written information readily available to the public through the board's Internet postings, holding a Virginia license constitutes using the CPA title. Accordingly, a person who holds a Virginia license:

1. Is providing services to the public using the CPA title if he provides services that are subject to the guidance of the standard-setting authorities listed in the standards of conduct and practice in subdivisions 5 and 6 of § 54.1-4413.3 of the Code of Virginia.
2. Is providing services to an employer using the CPA title if he provides to an entity services that require the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the board.

## **18VAC5-22-50. Determining whether the principal place of business of a person using the CPA title, or of a firm, is in Virginia.**

Complying with subdivision A 1 of § 54.1-4409.1, subsection B of § 54.1-4411, or subsection B of § 54.1-4412.1 of the Code of Virginia requires the person or firm to use reasonable judgment in determining whether Virginia is the principal place of business in which the person provides services to the public using the CPA title or the firm provides attest services or compilation services. The determination shall be reasonable considering the facts and circumstances and can be based on quantitative or qualitative assessments. The determination shall be reconsidered for changes in facts and circumstances that are not temporary.

## **18VAC5-22-60. Determining whether a college or university is an accredited institution.**

A. For the purpose of complying with subdivision A 1 a of § 54.1-4409.2 of the Code of Virginia, a college or university that is not accredited by one of the six major regional accrediting organizations listed in the definition of accredited institution in § 54.1-4400 of the Code of Virginia or their successors shall be considered an accredited institution if it is accredited by an accrediting organization recognized by the Council on Higher Education Accreditation (CHEA) or its successor. Publication of the name of the accrediting organization by CHEA or its successor shall be sufficient notification that the accrediting organization is recognized by CHEA or its successor.

B. To determine whether a college or university is an accredited institution if it is accredited by an accrediting organization that is neither one of the six major regional

accrediting organizations or their successors, nor an accrediting organization recognized by CHEA or its successor, representatives of the accrediting organization shall meet with a task force appointed by the board to study and recommend to the board how the organization shall demonstrate that its accreditation process and standards are substantially equivalent to the accreditation process and standards of the six major regional accrediting organizations or their successors. The size and composition of the task force shall depend on the facts and circumstances. However, at least one of the members of the task force shall have substantial experience with the accreditation process and standards of the six major regional accrediting organizations or their successors.

After the task force provides its recommendations to the board, the board shall decide what the requirements shall be to demonstrate that the accreditation process and standards of the accrediting organization are substantially equivalent to the accreditation process and standards of the six major regional accrediting organizations or their successors and shall communicate its decision to the organization. The organization shall then provide the required documentation to the board that will enable the board to decide whether a college or university accredited by the organization is an accredited institution as defined in § 54.1-4400 of the Code of Virginia.

## **18VAC5-22-70. Education.**

A. In order for a person to take the CPA examination through Virginia, he must have obtained from one or more accredited institutions or from the National College at least 120 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent prior to taking any part of the CPA examination.

B. For the purpose of complying with subsection A of this section and with subdivision A 1 a of § 54.1-4409.2 of the Code of Virginia, obtaining an accounting concentration or equivalent requires obtaining at a minimum:

1. 24 semester hours of accounting courses, including courses in auditing, financial accounting, management accounting, and taxation; and
2. 24 semester hours of business courses, no more than six semester hours of which could be considered accounting courses.

Principles or introductory accounting courses cannot be considered in determining whether a person has obtained the 48 minimum number of semester hours required for an accounting concentration or equivalent.

## **18VAC5-22-80. Examination.**

A. In order to comply with subdivision A 1 b of § 54.1-4409.2 of the Code of Virginia:

1. Each section of the CPA examination must be passed by attaining a uniform passing grade established through a psychometrically acceptable standard-setting procedure approved by the board.

2. Persons may take sections of the CPA examination in any order.

3. A person who fails a section of the CPA examination may not retake that section until the next quarter of the calendar year.

4. When a person first passes a section of the CPA examination, he has 18 months to pass the remaining sections. If the remaining sections are not passed within the 18-month period, the person loses credit for the first section passed, and a new 18-month period starts with the next section passed.

B. Failure to comply with the policies established by the board for conduct at the CPA examination may result in the loss of eligibility to take the CPA examination or credit for sections of the CPA examination passed. Cheating by a person in connection with the CPA examination shall invalidate any grade earned on any section of the CPA examination and may warrant expulsion from the CPA examination site and disqualification from taking the CPA examination for a specified period of time as determined by the board.

C. The board may postpone scheduled CPA examinations, the release of grades, or the issuance of licenses under the following circumstances:

1. A breach of CPA examination security;
2. Unauthorized acquisition or disclosure of the contents of a CPA examination;
3. Suspected or actual negligence, errors, omissions, or irregularities in conducting a CPA examination; or
4. Any other reasonable circumstances.

D. Prior to being considered for a Virginia license, a person shall pass an ethics examination approved by the board.

### **18VAC5-22-90. Continuing professional education.**

A. If during the current calendar year a person who holds a Virginia license provided services to the public using the CPA title, he shall have obtained at least 120 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 20 hours of continuing professional education, including an ethics course of at least two hours.

1. If the person also holds the license of another state and Virginia is not the principal place of business in which he provides services to the public using the CPA title, the ethics course taken to comply with this subsection either

shall conform with the requirements prescribed by the board or shall be an ethics course acceptable to the board of accountancy of another state in which the person holds a license.

2. Otherwise, the ethics course shall conform with the requirements prescribed by the board.

B. If during the current calendar year a person who holds a Virginia license provided services to an employer using the CPA title and did not provide services to the public using the CPA title, he shall have obtained a minimum number of hours of continuing professional education determined as follows:

1. If the current calendar year is 2009 or 2010, the person shall have obtained at least 90 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 15 hours of continuing professional education, including an ethics course of at least two hours.

2. If the current calendar year is 2011 or later, the person shall have obtained at least 120 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 20 hours of continuing professional education, including an ethics course of at least two hours.

The ethics course taken to comply with this subsection either shall conform with the requirements prescribed by the board or shall be an ethics course acceptable to the board of accountancy of another state in which the person holds a license.

C. If during the current calendar year a person who holds a Virginia license provided services to the public using the CPA title or to an employer using the CPA title and did not hold a Virginia license or the license of another state during one or both of the two preceding calendar years, he shall determine whether he has complied with the requirements of subsection A or B of this section as follows:

1. If the person became licensed during the current calendar year, he shall be considered to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year.

2. If the person became licensed during the preceding calendar year, he shall be considered to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year if during the current calendar year he obtained at least the minimum number of hours of continuing professional education required by the subsection for the current calendar year, including an ethics course of at least two hours.

3. If the person became licensed during the calendar year prior to the preceding calendar year, he shall be considered

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to have met the requirements of the subsection for the three-calendar-year period ending with the current calendar year if during the current calendar year and the preceding calendar year he obtained at least the minimum number of hours of continuing professional education required by the subsection for each of the years, including for each year an ethics course of at least two hours.

D. If during the current calendar year a person who holds a Virginia license did not provide services to the public using the CPA title or to an employer using the CPA title, he is not required to have obtained continuing professional education during the three-calendar-year period ending with the current calendar year. However, in order to begin providing those services:

1. He is required to have obtained at least 120 hours of continuing professional education prior to providing the services, including an ethics course of at least two hours.
2. The ethics course shall conform with the requirements prescribed by the board for the calendar year in which the person begins providing the services.

Continuing professional education obtained during the three calendar years prior to the current calendar year and from the start of the current calendar year to when he begins providing the services shall be considered in determining whether the person has complied with the requirements of this subsection.

E. If a person who has not held the license of any state applies for a Virginia license after the end of the calendar year in which he passes the CPA examination, he shall obtain continuing professional education prior to applying for the license, including an ethics course of at least two hours.

1. The required minimum number of hours of continuing professional education shall be 40, 80, or 120 depending on whether he applies for the Virginia license by the end of the first calendar year after the calendar year in which he passes the CPA examination, by the end of the second calendar year, or later.
2. The ethics course shall conform with the requirements prescribed by the board for the calendar year in which the person applies for the license.

Continuing professional education obtained subsequent to passing the CPA examination but during the three calendar years prior to the calendar year in which the person applies for the license and from the start of that calendar year to when he applies for the license shall be considered in determining whether he has complied with this requirement.

F. Continuing professional education acceptable to the board may be obtained through a variety of forums, provided there is a means of demonstrating that the education was obtained. The following forums are acceptable:

1. Attendance at seminars and educational conferences, provided that the instructors have appropriate knowledge of the subject matter and use appropriate teaching materials and that attendance is monitored in a manner that can be verified by the board;
2. Taking courses at an accredited institution for credit;
3. Self-study courses, provided there is a method for determining that the person met the learning objectives;
4. Making a presentation at a professional seminar, educational conference, or in a classroom setting, provided the person has appropriate knowledge of the subject matter and uses appropriate teaching materials; and
5. Writing material that is relevant to providing services to an employer using the CPA title or to the public using the CPA title, that is formally reviewed by an independent party, and that is published in a book, magazine, or similar publication that is used by persons who provide services to the public using the CPA title or to an employer using the CPA title.

Whether other forums are acceptable shall be determined by the board on a case-by-case basis.

G. In determining whether a person has obtained the required number of hours of continuing professional education:

1. Repeat presentations shall not be considered.
2. No more than 30 hours from preparing for and making presentations shall be considered during each three-calendar-year period.
3. One semester-hour of credit for courses at an accredited institution constitutes 15 hours of continuing professional education, and one quarter-hour of credit constitutes 10 hours of continuing professional education.

H. Depending on the facts and circumstances, the board may waive all or part of the continuing professional education requirement for one or more calendar years or grant additional time for complying with the continuing professional education requirement, provided that the waiver or deferral is in the public interest.

## **18VAC5-22-100. Experience.**

Prior to applying for a license, a person must have been employed in academia, a firm, government, or industry in any capacity involving the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the board, to providing services to the public using the CPA title or to an employer using the CPA title for a period that is the full-time equivalent of one year. Whether other skills are relevant shall be determined by the board on a case-by-case basis. Self-employment does not meet the definition of experience in § 54.1-4400 of the Code of Virginia.

**18VAC5-22-110. Demonstrating that a person's education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license.**

Subdivision A 2 of § 54.1-4411 of the Code of Virginia does not require the person to notify the board that the person's education, CPA examination, and experience are substantially equivalent to the requirements for obtaining a Virginia license.

**18VAC5-22-120. Supervision of firm personnel.**

To comply with subdivision C 2 of § 54.1-4412.1 of the Code of Virginia, a person's work must be planned, supervised, and reviewed by a person who either (i) holds a Virginia license or (ii) holds the license of another state and complies with the substantial equivalency provisions of § 54.1-4411 of the Code of Virginia.

**18VAC5-22-130. Owners of firms who are not licensees.**

To comply with subdivision D 2 of § 54.1-4412.1 of the Code of Virginia, owners of a firm who are not licensees must be persons who, based on the facts and circumstances, participate in the firm's activities on a regular, continuous, and substantial basis.

**18VAC5-22-140. Persons who release or authorize the release of reports.**

A. To comply with subdivision D 4 of § 54.1-4412.1 of the Code of Virginia, a person who releases or authorizes the release of reports on attest services or compilation services provided for persons or entities located in Virginia shall annually obtain a minimum of eight hours of continuing professional education related to attest services or compilation services. The hours obtained to meet this requirement shall be considered in determining whether the person has complied with the requirements of 18VAC5-22-90.

B. Firms providing attest services or compilation services shall establish policies and procedures to provide the firm with reasonable assurance that persons who release or authorize the release of reports on attest services or compilation services possess the kinds of competencies that are appropriate given the facts and circumstances. These policies and procedures shall address the required technical proficiency, familiarity with the industry and the person or entity, skills that indicate sound professional judgment, and other competencies necessary under the circumstances.

**18VAC5-22-150. Monitoring program and peer review.**

In order to comply with subdivision D 6 of § 54.1-4412.1 of the Code of Virginia, a firm shall comply with all components of the monitoring program in which it is enrolled, except that, depending on the facts and circumstances, the board may waive the requirement for a

peer review or grant additional time for complying with the requirement.

**18VAC5-22-160. Confidential consent agreements.**

To determine whether to enter into a confidential consent agreement under subsection A of § 54.1-4413.5 of the Code of Virginia, the board shall consider a violation minor if the board believes that the violation was not intentional misconduct, was not the result of gross negligence, and did not have a significant financial impact on persons or entities. The board shall enter into no more than two additional confidential consent agreements with a person or firm within 10 years after the first confidential consent agreement.

**18VAC5-22-170. Communication between the board and licensees.**

A. When requested by the board:

1. Persons or firms applying for the issuance, renewal, or reinstatement of a Virginia license or for lifting the suspension of the privilege of using the CPA title in Virginia or providing attest services or compilation services for persons or entities located in Virginia shall provide the board with support for their conclusion that they have complied with applicable provisions of Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

2. Firms shall provide the board with proof of enrollment in a monitoring program and copies of reports and other documentation related to acceptance of their peer reviews.

3. Persons or firms shall provide the board documents related to the board's investigation of their possible violation of provisions of Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia or this chapter.

Each person or firm shall respond within 30 calendar days to any request for information by the board under this subsection.

B. Each holder of a Virginia license shall notify the board in writing within 30 calendar days of any change in the holder's name or in the postal and electronic addresses where the person or firm may be reached.

C. The board shall transmit license renewal notices electronically unless a person or firm is unable to communicate electronically. However, § 54.1-4413.2 of the Code of Virginia places the responsibility for renewing a Virginia license on its holder, and that responsibility is not affected by whether the holder receives a license renewal notice.

VA.R. Doc. No. R10-75; Filed July 13, 2010, 9:39 a.m.



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# Regulations

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### MOTOR VEHICLE DEALER BOARD

#### Final Regulation

Title of Regulation: **24VAC22-40. Independent Motor Vehicle Dealer Operator Recertification Regulations (adding 24VAC22-40-10 through 24VAC22-40-70).**

Statutory Authority: §§ 46.2-1503.4 and 46.2-1506.1 of the Code of Virginia.

Effective Date: September 2, 2010.

Agency Contact: Bruce Gould, Executive Director, Motor Vehicle Dealer Board, 2201 West Broad Street, Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, or email [bruce.gould@mvdv.virginia.gov](mailto:bruce.gould@mvdv.virginia.gov).

#### Summary:

*The dealer operator is the individual who is in charge of the day-to-day operations of a motor vehicle dealership. For most independent (used) dealers, this individual is the owner. These regulations require independent dealer operators to recertify every three years by either completing a course of study or passing an exam. The regulations also establish criteria for entities that provide continuing education. No changes were made to the regulation since publication of the proposed regulation.*

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

### CHAPTER 40 INDEPENDENT MOTOR VEHICLE DEALER OPERATOR RECERTIFICATION REGULATIONS

#### Part I General Provisions

#### **24VAC22-40-10. Definitions.**

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

"Anniversary month" means the month in which a person became a certified dealer operator.

"Board" means the Motor Vehicle Dealer Board.

"Certificate of qualification" means a designation issued by the board acknowledging that the individual has been certified by the board as dealer operator pursuant to § 46.2-1511 of the Code of Virginia.

"Course" means a course of study leading to recertification for independent dealer operators offered by correspondence, electronically, or in person.

"Course provider" or "provider" means any person or entity presenting or offering one or more recertification education courses.

"Exam" or "examination" means a test administered by the board.

"Executive director" means the executive director of the board.

"Franchise motor vehicle dealer" means a dealer in new motor vehicles that has a franchise agreement with a manufacturer or distributor of new motor vehicles, trailers, or semitrailers.

"Independent dealer operator" means the individual who works at the established place of business of an independent dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Independent motor vehicle dealer" or "independent dealer" means a dealer in used motor vehicles who is not also licensed as a franchise motor vehicle dealer.

"Original application" means an application for an independent dealer operator certificate of qualification from an applicant who has never been issued an independent dealer operator certificate of qualification in Virginia or whose Virginia independent dealer operator certificate of qualification has been expired for more than 60 days.

"Recertification" means completing the requirements of this chapter to recertify a dealer operator certificate of qualification.

#### **24VAC22-40-20. General.**

A. The board shall transmit a recertification notice to the home address or email address of record of independent dealer operators at least 90 days prior to the expiration date of the certificate of qualification. Failure to receive a recertification notice does not absolve the dealer operator from the recertification requirements.

B. Independent dealer operators must maintain an original copy of the proof of completing a recertification course or exam for a period of five years.

C. Continuing education or a course required by a disciplinary order may not be used to satisfy recertification requirements.

#### Part II Recertification

#### **24VAC22-40-30. Recertification schedule.**

A. Independent dealer operator certificates of qualification are valid for 36 months and shall expire on the last day of the

thirty-sixth month. Certificates of qualification shall be deemed not to have expired if the recertification is completed within 60 days of the expiration date.

B. All independent dealer operators must recertify according to the following schedule:

1. Independent dealer operators certified after January 1, 2010, must complete the recertification requirement within 36 months of the anniversary month of their original qualification and every 36 months from their anniversary month thereafter.

2. Independent dealer operators who were certified between January 1, 2006, and December 31, 2009, must complete the recertification requirement by their 2013 anniversary month and every 36 months from their anniversary month thereafter.

3. Independent dealer operators who were certified between January 1, 1995, and December 31, 2005, must complete the recertification requirement by their 2012 anniversary month and every 36 months from their anniversary month thereafter.

4. Independent dealer operators whose original qualification date is prior to January 1, 1995, must complete the recertification requirement by their 2011 anniversary month and every 36 months from their anniversary month thereafter.

C. Independent dealer operators may complete the recertification requirement up to six months prior to the expiration date of their certificate of qualification.

D. The executive director may for good cause grant an extension for the completion of the recertification requirements provided a written request from the dealer operator is received by the executive director at least 15 days prior to the expiration date. Such extension shall not relieve the licensee of the recertification requirement.

E. Any application received from an applicant whose certificate has expired shall be considered an original application.

F. For independent dealer operators who have served outside of the United States in the armed services of the United States, the certification shall be deemed not to have expired if the recertification requirement has been completed not more than 90 days from the date they are no longer serving outside the United States in the armed services of the United States.

### **24VAC22-40-40. Recertification requirements.**

To become recertified, an independent dealer operator must either:

1. Successfully complete a board-approved course; or
2. Successfully complete an examination administered by the board. Any independent dealer operator taking and

failing the exam must then successfully complete a course in order to become recertified.

### **Part III** **Course Providers**

### **24VAC22-40-50. Course approval.**

A. The board may approve a course provider under the following provisions:

1. The provider has submitted an application to the board prior to offering the program.

2. The submitted application includes at a minimum the following information:

a. Name of provider;

b. Proposed course schedule including locations (as applicable);

c. Charges to participants;

d. Description of program content and objectives;

e. Credentials of faculty members;

f. Method of delivery;

g. Evaluation procedure;

h. Mechanism for recordkeeping; and

i. Any such information as the board deems necessary to assure quality and compliance.

3. Course curriculum must include but is not limited to the following:

a. Ethical practice;

b. Recordkeeping;

c. Recent state and federal laws and regulations;

d. Review of relevant federal regulations;

e. Titling and registration requirements including use of dealer related license plates;

f. Offsite sales;

g. Financing;

h. Dealer practices;

i. Salespersons licenses; and

j. Advertising.

4. At least six hours of each course offering if in person or the equivalent of six hours for electronic and correspondence based courses, as approved by the executive director, must be directly related to the scope of dealer operators. A course containing content which promotes, sells, or offers goods, products, or services shall not be approved. However, the provider of a course may

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promote goods, products, or services at the conclusion of a course provided that it is made clear to participants that the course has concluded and that attendance at any additional presentations are optional.

B. The board shall notify the provider within 60 days following the receipt of a completed application of approval or disapproval of a program.

C. The board shall periodically review and monitor programs.

D. Any changes in the information previously provided about an approved program or provider must be submitted to the board. Failure to do so may cause the board to withdraw its approval of the course provider or program.

E. The executive director has the authority to suspend the approval of any course or provider and the board may withdraw approval for good cause.

## **24VAC22-40-60. Course provider responsibilities.**

The provider of an approved program shall be responsible for the following:

1. Providing to each participant who successfully completes the required recertification course a certificate with at minimum, (i) the name of the provider; (ii) name of the participant; and (iii) the date of completion.

2. Maintaining all records on courses and its participants for a period of five years and making those records available to the board upon request.

3. Entering names of participants completing the course into a database as directed by the board within five days of the participant completing the course.

4. Collecting the recertification application fee from applicants and transmitting such fee to the board as directed by the board within 15 days of receiving the fee from the applicant.

## Part IV Fees

### **24VAC22-40-70. Fees.**

A. The recertification application fee shall be \$25 for taking the course and shall be paid directly to the course provider.

B. The fee for returned checks shall be \$35.

C. In addition to the recertification application fee, course providers may charge applicants a course fee of no more than \$250.

D. The recertification application fee for taking the exam shall be \$50 and shall be paid at the time the exam is administered.

VA.R. Doc. No. R08-1219; Filed July 9, 2010, 12:34 p.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 19 (2010)

### **Conservation and Efficiency in the Operation of State Government**

#### Importance of the Issue

Virginia is blessed with a unique and spectacular natural environment. Our natural resources are so central to our quality of life, that their conservation, preservation and protection are required by the Constitution of Virginia. That responsibility imposes on each of us, in state government, a personal responsibility to do our work always and to every extent possible in ways that minimize the impact on Virginia's natural resources and preserve them for future generations of Virginians.

Virginia's government must set the example in its use of all resources. We must be conservative and frugal whether we are using dollars provided by taxpayers, materials purchased with those dollars, or the exceptional natural resources entrusted to our care. To this end, conservation and efficiency must be a central consideration in how we conduct all of our business and operations.

It is, therefore, expected that state agencies and institutions, offices and organizations, will take the lead in adopting practices and policies that maximize efficiency and conservation, and minimize waste and the impact of operations on the environment.

The Commonwealth, in performing a multitude of critical functions and operations, like other large organizations and business enterprises, has a significant impact on the environment. It is imperative that in every aspect of state government activity, we act as conscientious stewards of our resources and operate in a manner that to every extent possible minimizes the impact of our operations on Virginia's environment, while being prudent with taxpayer dollars.

By the power vested in me by Article V of the Constitution of Virginia, and § 2.2-103 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct the Governor's Secretaries and all executive branch agencies and institutions, to every extent practicable, to operate in accordance with the following guidelines.

#### Guidelines for Operation

##### **Energy Use –**

In general, all appropriate measures to reduce the consumption of energy should be utilized.

All interior and exterior lights, computers, and other electrical devices and appliances should, as much as possible without compromising safety concerns, be turned off or powered down to stand by status when not in use, and when offices are closed.

Heating and cooling systems, whether in leased space or in state owned buildings, should at all times be actively managed in a manner that minimizes energy consumption.

Video or tele-conferences should be preferred to in-person meetings where meeting in person would require out of town, or even cross town, travel.

If travel is required, car pooling should be employed if possible. Agencies may adopt policies that do not provide for reimbursement for single-passenger use of personal vehicles for business travel if such use is avoidable. Agency policies should encourage the use of public transportation and other alternatives to personal vehicle use. All such policies must be reviewed and approved by the relevant Cabinet Secretary.

Citizens and businesses should be able and encouraged to engage in electronic transactions with the Commonwealth rather than having to travel to state offices.

##### **Air and Water Use –**

When practicable, landscaping at state facilities should employ drought resistant grass, plants, shrubs and trees in order to minimize the use of water necessary for irrigation by amount and frequency.

Plumbing leaks should be addressed immediately and when plumbing fixtures are replaced or installed new they should be the lowest possible flow available to meet the needs of the facility and comply with VUSBC.

To the extent that state government activity requires air or water permits from the Department of Environmental Quality, agencies must fully comply with all conditions and strive to operate at well below limits permitted.

##### **Waste Reduction –**

Follow the waste management hierarchy to reduce, reuse, or recycle whenever possible.

Every effort should be made for publications of the executive branch agencies and institutions to be published in electronic form only, unless there is a statutory or regulatory requirement to the contrary, or a substantial portion of the intended recipients of the publication cannot be reached electronically.

As much as practicable, materials and supplies purchased by the state, including paper, should be made from recycled and or renewable materials, where available and appropriate to the task for which they will be used, and be provided with a minimum of packaging.

Durable products should be used rather than disposable whenever practical, including whenever meals are served; if disposable materials must be used they should be biodegradable or recyclable.



Contact the Department of General Services office of surplus property to receive guidance on proper disposal instructions for serviceable state-owned material and equipment, and to inquire about surplus material and equipment that may be available in the state and federal surplus program rather than incurring the expense of buying new.

Use of remanufactured components should be maximized.

To the extent disposable plastics must be used, they should, when practicable, be recyclable plastics only.

Paper and other office supplies should be reused and only when beyond viable reuse, recycled. White paper, colored paper, plastic, aluminum, batteries and printer cartridges should all be recycled.

Collection containers should be provided for all recyclable materials, and employees are expected to make use of them.

Landscape maintenance waste should be composted as practicable.

Oil and antifreeze from state vehicles should be recycled.

Reduce use of toxic substances where suitable alternatives exist.

## **Buildings and Construction –**

When leasing space, agencies and institutions should consider access to public transportation, if available. Where practical, new offices and facilities should be located within a quarter mile of public transportation access and in locations that are pedestrian and bicycle accessible.

When leasing space, agencies should also actively seek buildings that meet energy Star, LEED, or Green Globe standards.

Conferences and meetings not held in state owned offices, buildings or facilities should be held at “Virginia Green” certified facilities if such use will meet the needs for the meeting, will not increase travel distances, and is not cost-prohibitive.

## Specific Directives

In addition to operating in accordance with the above guidelines, every agency, institution, office and organization of state government shall:

Continue to comply with § 2.2-2817.1 of the Code of Virginia, requiring each state agency to pursue a goal of not less than 20 percent of its eligible workforce telecommuting by January 1, 2010, and that all executive branch agencies and institutions shall provide a report to the Secretary of Administration no later than December 1, 2010, regarding compliance with § 2.2-2817.1, as directed by statute.

Purchase or lease only Energy Star rated appliances and equipment for all classifications for which an Energy Star designation is available.

When entering the design phase for construction of a new building of more than 5,000 gross square feet, or renovating such a building where the cost of renovation exceeds 50 percent of the value of the building, shall meet Department of General Services (DGS), Division of Engineering and Buildings "Virginia Energy Conservation and Environmental Standards" for energy performance and water conservation.

All new or renovated buildings described above, should conform to LEED silver or Green Globes two-globe standards, unless special circumstances, including significant additional cost, support exemption from such standards and the Director of the DGS finds that construction to the standards would be impracticable.

The Department of General Services also shall include in its policies and procedures guidelines for the purchase of fuel-efficient, low-emission state-owned vehicles, when practicable. In addition, DGS shall include in its policies and procedures for leasing vehicles guidelines that encourage the use of compact, fuel-efficient, and low-emission vehicles.

Beginning on September 1, 2010, procure only diesel fuel, taking into consideration availability and variability in cost of biodiesel fuel with respect to unblended diesel fuel, containing, at a minimum, two percent, by volume, biodiesel fuel or green diesel fuel, as defined in § 45.1-394 of the Code of Virginia. This requirement shall only apply to procurements of diesel fuel for use in on-road internal combustion engines and #2 fuel burned in a boiler, furnace, or stove for heating, and shall not apply if supply is not readily available or the cost of such procurement exceeds the cost of unblended diesel fuel by 5 percent or more.

Develop and employ efficiency tools with the goal of reducing its annual energy use by at least 5 percent for fiscal year 2012 (compared to fiscal year 2010) and report their progress towards this energy-saving goal to the Deputy Secretary of Natural Resources and Senior Advisor on Energy. Such progress shall be reported to the public on the Secretary of Natural Resources' website. In order for large agencies to be better able to manage this process, it is recommended that agencies that have energy costs exceeding one million dollars annually have a certified energy manager.

## State Agency Cooperation and Support

Finally, the following agencies shall assist all agencies, offices, institutions and organizations of state government in their efforts to operate in conformance with these guidelines and requirements:

The Department of Mines, Minerals and Energy shall be responsible for providing technical assistance to state agencies and institutions for measuring, reporting and

achieving energy savings, purchasing electricity, natural gas, and fuel oils, and in general provide information to assist agencies and institutions with implementation of this Executive Order; and

The Department of General Services shall consider these guidelines in its review and approval of leases, purchases and plans for new construction and incorporate them into its rules and practices for the procurement of goods and services. In addition, DGS shall establish specifications for use by state agencies and institutions subject to the Virginia Public Procurement Act in the procurement of commodities and services that make environmental and energy efficiency practices of vendors, where appropriate, relevant considerations in any solicitation.

Each agency, institution, operation, organization and office is expected to implement these guidelines and meet these requirements as part of Virginia's government's constitutional obligation to be conscientious stewards of the environment, and with the understanding that, as public officers and employees, each of us sets the example for our citizens.

A copy of the Executive Order shall be published electronically to each state employee. Each agency head shall communicate these guidelines and requirements throughout his or her agency as an operational priority, and report, as required by the appropriate Secretary, on all conservation and efficiency efforts undertaken. All Cabinet members responsible for oversight of agencies and institutions of state government shall require such reporting at least twice each year.

Effective Date of the Executive Order

This Executive Order supersedes and rescinds Executive Order Number Eighty-two (2009), Greening of State Government, issued by Governor Timothy M. Kaine on June 10, 2009.

This Executive Order shall become effective upon its signing and shall remain in full force and effect until July 1, 2014, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 1st day of July, 2010.

/s/ Robert F. McDonnell  
Governor

EXECUTIVE ORDER NUMBER 20 (2010)

**The Governor's Advisory Board on Volunteerism and National Service**

Community and national service are vital to the fabric of American democracy. Volunteerism and service are critical aspects of our civic life. It is appropriate that the state and federal governments work together to develop a focal point for these efforts.

Mindful of the importance of community and national service, and by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.2-134 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Governor's Advisory Board on National Service and Community Service.

The Board is classified as a gubernatorial advisory board in accordance with Section 2.2-2100 of the Code of Virginia.

The Board shall be established to comply with the provisions of the National and Community Services Trust Act of 1993 and to advise the Governor and Cabinet Secretaries on matters related to promotion and development of national service in the Commonwealth of Virginia. The Board shall have the following specific duties:

1. To advise the Governor, the Secretaries of Health and Human Resources, Education, and Natural Resources, the Assistant to the Governor for Commonwealth Preparedness, the Commissioner of the Department of Social Services, and other appropriate officials, on national and community service programs in Virginia and on fulfilling the responsibilities and duties prescribed by the federal Corporation for National Service.
2. To advise the Governor, the Secretaries of Health and Human Resources, Education, and Natural Resources, the Assistant to the Governor for Commonwealth Preparedness, the Commissioner of the Department of Social Services, and other appropriate officials, on the development, implementation, and evaluation of Virginia's Unified State Plan that outlines strategies for supporting and expanding national and community service throughout the Commonwealth.
3. To promote the expansion of AmeriCorps programs to meet Virginia's most pressing human, educational, environmental, and public safety needs.
4. To collaborate with the Department of Social Services and other public and private entities to recognize and call attention to the significant community service contributions of Virginia citizens and organizations.

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# Governor

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5. To develop a plan for sustaining and increasing the number of Virginia service programs supported by the Corporation for National Service.
6. To promote and coordinate State programs offering opportunities for community service within the Commonwealth.
7. To work with the Department of Social Services on promoting the involvement of faith based organizations in community and national service efforts.

The Board shall be comprised of no more than twenty voting members appointed by the Governor and serving at his pleasure. No more than 25 percent of voting members may be state employees.

The Governor may appoint additional persons at his discretion as ex-officio non-voting members. The voting members of the Board shall elect the Chairman. Board voting membership shall include representatives for the categories as outlined in federal regulations issued by the Corporation for National Service.

Such staff support as is necessary to support the Board's work during the term of its existence shall be furnished by the Department of Social Services, and any other executive branch agencies having definitely and closely related purposes, as the Governor may designate. An estimated 300 hours of staff time will be required to support the work of the Board.

Funding necessary to support the Board shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes of the Board, authorized by Section 2.2-135 of the Code of Virginia. Direct costs for this Board are estimated at no more than \$15,000. Members of the Board shall serve without compensation and shall receive reimbursement for expenses incurred in the discharge of their official duties.

The Board shall meet at least quarterly upon the call of the Chairperson. The Board shall make an annual report to the Governor and shall issue such other reports and recommendations as it deems necessary or as requested by the Governor.

This Executive Order shall be effective upon its signing and shall remain in force and effect until June 30, 2011, unless amended or rescinded by further executive order.

Given under my hand and under the seal of the Commonwealth of Virginia this 6th day of July 2010.

/s/ Robert F. McDonnell  
Governor

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# GENERAL NOTICES/ERRATA

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## STATE CORPORATION COMMISSION

### Bureau of Insurance

July 1, 2010

Administrative Letter 2010-07

To: All Licensed Insurers and Rate Service Organizations  
Subject to the Provisions of Chapter 19 of Title 38.2 of  
the Code of Virginia

Re: Requests for Trade Secret Protection of Rates and/or  
Supplementary Rate Information Pursuant to House Bill  
No. 531

- Effective July 1, 2010, § 38.2-1907 (Filings Open to Inspection) is amended to allow insurers and rate service organizations (RSO) to request confidentiality of rates and supplementary rate information provided that such information constitutes a trade secret pursuant to § 59.1-336. The Bureau of Insurance (Bureau) has established the following procedural requirements for filers to follow when submitting requests for confidentiality of trade secret information:
- Filings are open to the public pursuant to § 38.2-1907. A filing will be held confidential by the Bureau ONLY if the insurer or RSO has requested trade secret protection and submitted the appropriate documentation.
- The request for trade secret protection must be submitted with the filing. If the Bureau disagrees with the assertion that such documents should be protected as a trade secret, the insurer or RSO will be given the opportunity to further justify its position.
- The request for trade secret protection must contain the following information (see sample form attached):
  - Information identifying the insurer or RSO making the request (e.g., name of the individual submitting the request, insurer's or RSO's name and NAIC number, mailing address, e-mail address, phone number, and fax number).
  - A detailed explanation identifying the content of the filing for which confidentiality is requested with sufficient details to demonstrate why the content constitutes a trade secret as defined in § 59.1-336. Please note that "trade secret" is defined in § 59.1-336 as "...information, including but not limited to, a formula, pattern, compilation, program, device, method, technique, or process that: (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its

disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

- A detailed explanation as to how the release of the information would cause economic injury to the insurer or rate service organization.
- The names of the states in which trade secret protection has been requested for the filing and the outcome of each request.
- In order to protect the confidentiality of the trade secret documents, filings with requests for trade secret protection should contain ONLY the materials to be protected, and the filing should be clearly designated as "confidential." For example, do not file rates in the same filing as a trade secret rule. Please provide a cross-reference for any associated companion filing (e.g., SERFF tracking number, company filing number, etc.). The Bureau will reject SERFF filings and return paper filings that contain a combination of trade secret and public record materials.
- If a filing under trade secret protection is challenged by a member of the public, the Bureau will notify the insurer or RSO of the challenge. The documents will remain confidential until the matter is resolved.

Any questions related to this administrative letter may be directed to:

#### **Personal Lines Rates & Forms**

Rebecca Nichols, CPCU, CIC, CIE, CCP  
Principal Insurance Market Examiner  
(804) 371-9331  
rebecca.nichols@scc.virginia.gov

#### **Commercial Lines Rates & Forms**

Betty Branum, CPCU, CIC  
Principal Insurance Market Examiner  
(804) 371-9242  
betty.branum@scc.virginia.gov

Sandra Mawyer  
Principal Insurance Market Examiner  
(804) 371-9197  
sandra.mawyer@scc.virginia.gov

/s/ Alfred W. Gross  
Commissioner of Insurance

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# General Notices/Errata

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**Request for Trade Secret Protection**  
**Pursuant to § 38.2-1907 of the Code of Virginia**

Requests for the protection of the content of a filing as a trade secret pursuant to § 38.2-1907 must contain the following information. It is your responsibility to claim trade secret protection where it is needed and to demonstrate that the information constitutes a trade secret as defined in § 59.1-336.

1. Identification of the party requesting trade secret protection:

Name of Insurance Company/RSO: \_\_\_\_\_

NAIC #: \_\_\_\_\_

Name of Authorized Representative: \_\_\_\_\_

Title of Authorized Representative: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

E-mail address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

2. Provide a detailed explanation of the content of the filing for which confidentiality is requested and why it constitutes a trade secret as defined in § 59.1-336 (use additional pages as required):

\_\_\_\_\_

\_\_\_\_\_

3. Provide an explanation as to how the release of the information would cause economic injury to the insurer or rate service organization (use additional pages as required):

\_\_\_\_\_

\_\_\_\_\_

4. The names of the states in which trade secret protection has been requested for the filing and the outcome of each request: \_\_\_\_\_

\_\_\_\_\_

Signature of authorized representative: \_\_\_\_\_

Date: \_\_\_\_\_

TSP-1 (7-1-2010)

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**Public Notice - Air Quality Plan Revision**

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on various proposed revisions to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA). The Commonwealth intends to submit the regulations to the EPA as a revision to the plan in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Provisions affected: The regulations of the board affected by this action are: (i) 9VAC5-10 (General Definitions), Revision G09; (ii) 9VAC5-20-21 (Documents incorporated by reference), various revisions; (iii) 9VAC5-30 (Ambient Air Quality Standards), Revisions F06c, D08, and A09; (iv) Article 51 of 9VAC5-40 (Existing Stationary Sources), Emission Standards for Stationary Sources Subject to Case-by-Case RACT Determinations, Revision E04c; (v) Articles 8 and 9 of 9VAC5-80 (Permits for Stationary Sources), Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas, and Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region, Revision C08; (vi) Regulation for Open Burning (9VAC5-130), Revision L08; and (vii) Regulation for Emissions Trading (9VAC5-140), including the CAIR Emissions Trading Program (Revision K07), and the NO<sub>x</sub> SIP Call Budget (Revision K08).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as revisions to the plan.

Public comment period: August 4, 2010, to September 3, 2010.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. The request should also specify the specific action or actions (revision number and title) for which a hearing is requested. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted for the specific action or actions.

Public comment stage: The regulations included in this plan have been adopted by the State Air Pollution Control Board in accordance with the Code of Virginia; DEQ is accepting

comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposals: The proposed revisions will consist of amendments to plan provisions concerning the following: (i) for Revision G09, adding propylene carbonate and dimethyl carbonate to the list of substances not considered to be volatile organic compounds; (ii) for Revisions E04c and F06c, corrections of typographical errors; (iii) for Revision D08, adding a new 8-hour ozone national ambient air quality standard (NAAQS) at a level of 0.075 parts per million; (iv) for Revision A09, adding a new lead NAAQS of 0.15 micrograms per cubic meter; (v) for Revision C08, allowing the terms and conditions of various elements of the NSR program to be combined into a single permit, and providing an exemption for the use of alternate fuels; (vi) for Revision L08, recodifying the open burning regulations under a new chapter; (vii) for Revision K07, revising the definition of a cogeneration unit so that most units co-firing biomass will be exempt from the rule; and (viii) for Revision K08, extending the state trading budget beyond 2008, and extending allocations issued to electric and nonelectric generating units beyond 2008.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. It is planned to submit all provisions of the proposals as revisions to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Please specify the specific action or actions (revision number and title) for which you are providing comment. All documents received are part of the public record.

To review documents: The proposals and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.state.va.us/air/permitting/planotes.html>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 629 E. Main St., 8th Floor, Richmond, VA, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355 Deadmore St., Abingdon, VA, telephone (540) 676-4800,
- 3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Rd., Roanoke, VA, telephone (540) 562-6700,

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## General Notices/Errata

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4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Rd., Lynchburg, VA, telephone (804) 582-5120,

5) Valley Regional Office, 4411 Early Rd., Harrisonburg, VA, telephone (540) 574-7800,

6) Piedmont Regional Office, 4949-A Cox Rd., Glen Allen, VA, telephone (804) 527-5020,

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and

8) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact for public comments, document requests, and additional information: For Revisions E04c, F06c, D08, A09 and G09: Karen Sabasteanski, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (telephone (804) 698-4426, FAX (804) 698-4510, or email [karen.sabasteanski@deq.virginia.gov](mailto:karen.sabasteanski@deq.virginia.gov)). For Revision C08: Gary Graham, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (telephone (804) 698-4103, FAX (804) 698-4510, or email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov)). For Revisions K07, K08, and L08: Mary Major, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218 (telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov)).

### Total Maximum Daily Load for Totuskey Creek

Notice is hereby given that the Virginia Department of Environmental Quality (DEQ) seeks comment on the proposed modifications to the bacteria total maximum daily load (TMDL) developed for Totuskey Creek in Richmond County.

The Totuskey Creek TMDL was developed to address bacterial impairments in portions of the free-flowing and tidal segments of Totuskey Creek. The TMDL was approved by the U.S. Environmental Protection Agency (EPA) on February 9, 2010, and can be found at the following website: <http://www.deq.virginia.gov/tmdl/apptmdls/shellfish/totuskey.pdf>.

DEQ seeks written comments from interested persons on the modification of this TMDL. In the Totuskey Creek Bacteria TMDL approved by the EPA and in 2010, these changes are necessary for the following permitted dischargers:

- The Town of Warsaw WWTP (VA0026891) is a VPDES minor municipal facility in Warsaw, Virginia. The facility, which discharges to a tidal unnamed tributary of Totuskey Creek and directly to Totuskey Creek, was incorrectly assigned a waste load allocation (WLA) for the shellfish use impairment of 1.61E+08 cfu/day, based on the incorrect fecal coliform

concentration limit of 14 cfu/100ml. DEQ proposes to revise the TMDL by correcting the shellfish use bacteria WLA to 2.29E+09 cfu/day to accommodate this facility at a maximum design flow of 0.30 MGD and a fecal coliform concentration limit of 200 cfu/100mL. The change to the WLA is not the result of any permit change, rather the original TMDL contained incorrect WLA values for this facility.

- The Haynesville Correctional Facility (VA0023469) is a VPDES minor municipal facility near Haynesville, Virginia. The facility, which discharges to a nontidal unnamed tributary of Garlands Millpond (which later flows to Little Totuskey Creek), was incorrectly assigned a WLA for the shellfish use impairment of Totuskey Creek. DEQ proposes to revise the TMDL by removing the WLA originally assigned to this facility (8.03E+07 cfu/day). This facility lies approximately 7 miles upstream of the shellfish growing segment of Totuskey Creek. The change to the WLA is not the result of any permit change; rather the original TMDL incorrectly assigned a shellfish use WLA for this facility.
- The Haynesville Correctional Facility (VA0023469) is a VPDES minor municipal facility near Haynesville, Virginia. The facility, which discharges to a nontidal unnamed tributary of Garlands Millpond (which later flows to Little Totuskey Creek), was incorrectly assigned a WLA for the primary contact recreation use impairment of tidal Totuskey Creek based on the incorrect maximum design flow of 0.15 MGD. DEQ proposes to revise the TMDL by correcting the WLA originally assigned to this facility (2.01E+08 cfu/day). The correct primary contact recreation use WLA based on the maximum design flow of 0.178 at an enterococci concentration of 35 cfu/100ml is 2.38E+08 cfu/day. This facility lies approximately 3.6 miles upstream of the impaired tidal segment of Totuskey Creek. The change to the WLA is not the result of any permit change; rather the original TMDL incorrectly assigned a shellfish use WLA for this facility. This results in a change to the total WLA for the recreation use impairment in Totuskey Creek (enterococci). The former total WLA (6.02E+08 cfu/day) has been changed to 6.40E+08 cfu/day, to accommodate the correction of the Haynesville Correctional Facility design flow.

The proposed changes will neither cause nor contribute to the nonattainment of Totuskey Creek, as documented in the EPA approved TMDL report.

The public comment period for this modification will end on September 2, 2010. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Margaret Smigo, Piedmont Regional Office, Department of

Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, (804) 527-5124, or email [margaret.smigo@deq.virginia.gov](mailto:margaret.smigo@deq.virginia.gov).

## STATE WATER CONTROL BOARD

### Proposed Consent Special Order for Laburnum, L.L.C. for Airport BP

An enforcement action has been proposed for Laburnum, L.L.C. for Airport BP, for alleged violations in Henrico County, Virginia. The State Water Control Board proposes to issue a consent special order to Laburnum, L.L.C. to address noncompliance with underground storage tank regulations. 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). Lisa Dewey will accept comments by email at [lisa.dewey@deq.virginia.gov](mailto:lisa.dewey@deq.virginia.gov), FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from August 2, 2010, to September 1, 2010.

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

### Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed

Beginning with Volume 26, Issue 1 of the Virginia Register of Regulations dated September 14, 2009, the Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed will no longer be published in the Virginia Register of Regulations. The cumulative table may be accessed on the Virginia Register Online webpage at <http://register.dls.virginia.gov/cumultab.htm>.

### 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 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

### STATE AIR POLLUTION CONTROL BOARD

**Title of Regulation:** **9VAC5-140. Regulation for Emissions Trading Programs (repealing 9VAC5-140-1061, 9VAC5-140-1062, 9VAC5-140-2061, 9VAC5-140-2062, 9VAC5-140-3061, 9VAC5-140-3062).**

**Publication:** 26:23 VA.R. 2682-2686 July 19, 2010.

**Correction to Final Regulation:**

Page 2682, Registrar's Notice, replace the notice with the following:

**REGISTRAR'S NOTICE:** The State Air Pollution Control Board is claiming an exclusion 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 where no agency discretion is involved. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

VA.R. Doc. No. R10-2457; Filed July 20, 2010, 1:48 p.m.

### MARINE RESOURCES COMMISSION

**Title of Regulation:** **4VAC20-170. Pertaining to the Removal of Nets from Fixed Fishing Devices.**

**Publication:** 21:18 VA.R. 2372 May 16, 2005.

**Correction to Final Regulation:**

Page 2372, change the title of the regulation to Pertaining to the Removal of Nets.

VA.R. Doc. No. R05-181; Filed July 21, 2010, 8:30 a.m.



