http://register.dls.virginia.gov Virginia Code Commission

# Virginia Register of Regulations

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## TABLE OF CONTENTS



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# THE VIRGINIA REGISTER INFORMATION PAGE

**THE VIRGINIA REGISTER OF REGULATIONS** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

**ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the Virginia Register, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

**FAST-TRACK RULEMAKING PROCESS**

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

**EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 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.

# PUBLICATION SCHEDULE AND DEADLINES

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

**August 2010 through August 2011**

| Volume: Issue | Material Submitted By Noon* | Will Be Published On |
|---|---|---|
| 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 **(Tuesday)** | December 6, 2010 |
| 27:8 | December 1, 2010 | December 20, 2010 |
| 27:9 | December 14, 2010 **(Tuesday)** | 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.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF VETERINARY MEDICINE

#### Agency Decision

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.**

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

Name of Petitioner: Elaine Sottile.

Nature of Petitioner's Request: To amend regulations to prohibit a veterinarian from charging a fee to write a prescription; a written prescription is necessary for consumer to be able to obtain medicines from less costly sources.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board does not regulate business practice or fees charged by veterinarians for services rendered, so it has denied the petition to prohibit charging a fee for writing a prescription. While most veterinarians do not typically impose a fee for writing a prescription separate from an examination fee, they would reserve the right to charge such a fee for fulfilling repeated requests without any other means of compensation. It is then the consumer's choice whether to accept the business practice of a particular veterinarian or seek care from another practitioner.

Agency Contact: Leslie Knackel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, FAX (804) 525-4471, or email leslie.knackel@dhp.virginia.gov.

VA.R. Doc. No. R10-40; Filed July 21, 2010, 9:48 a.m.

## 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 to repeal **8VAC20-670, Regulations Governing the Operation of Private Day Schools for Students with Disabilities,** and promulgate **8VAC20-671, Regulations Governing the Operation of Private Day Schools for Students with Disabilities and Educational Programs Offered in Group Homes and Residential Facilities in the Commonwealth**, which was published 25:3 VA.R. 337 October 13, 2008. The board intends to issue an updated Notice of Intended Regulatory Action.

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

VA.R. Doc. No. R09-1552; Filed July 26, 2010, 1:36 p.m.

## TITLE 11. GAMING

### VIRGINIA RACING COMMISSION

### Withdrawal of Notice of Intended Regulatory Action

The Virginia Racing Commission has withdrawn the Notice of Intended Regulatory Action for **11VAC10-50**, **Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Racing Officials,** which was published 19:25 VA.R. 3660 August 25, 2003.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

VA.R. Doc. No. R03-304; Filed July 19, 2010, 11:00 a.m.

### Withdrawal of Notice of Intended Regulatory Action

The Virginia Racing Commission has withdrawn the Notice of Intended Regulatory Action for **11VAC10-60, Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Participants**, which was published 19:25 VA.R. 3660 August 25, 2003.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

VA.R. Doc. No. R03-305; Filed July 19, 2010, 11:00 a.m.

### Withdrawal of Notice of Intended Regulatory Action

The Virginia Racing Commission has withdrawn the Notice of Intended Regulatory Action for **11VAC10-60**, **Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Participants**, which was published 25:25 VA.R. 4372 August 17, 2009. The amendments to increase permit holder fees were adopted in a separate action.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

VA.R. Doc. No. R09-1942; Filed July 19, 2010, 11:00 a.m.

### Withdrawal of Notice of Intended Regulatory Action

The Virginia Racing Commission has withdrawn the Notice of Intended Regulatory Action for **11VAC10-70, Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Stewards (Period of Authority)**, which was published 19:11 VA.R. 1563 February 10, 2003.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

VA.R. Doc. No. R03-116; Filed July 19, 2010, 11:00 a.m.

### Withdrawal of Notice of Intended Regulatory Action

The Virginia Racing Commission has withdrawn the Notice of Intended Regulatory Action for **11VAC10-70**, **Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Stewards**, which was published 19:25 VA.R. 3661 August 25, 2003.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

VA.R. Doc. No. R03-306; Filed July 19, 2010, 11:00 a.m.

# TITLE 12. HEALTH

## STATE BOARD OF HEALTH

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending the following regulation: **12VAC5-481, Virginia Radiation Protection Regulations.** The purpose of the proposed action is to update regulations for X-ray and therapeutic radiation machines.

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

Statutory Authority: § 32.1-229 of the Code of Virginia.

Public Comment Deadline: September 15, 2010.

Agency Contact: Leslie Foldesi, MS, CHP, Director, Division of Radiological Health, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, or email les.foldesi@vdh.virginia.gov.

VA.R. Doc. No. R10-2412; Filed July 15, 2010, 2:57 p.m.

### Withdrawal of Notice of Intended Regulatory Action

The State Board of Health has withdrawn the Notice of Intended Regulatory Action for **12VAC5-507, Guidelines for General Assembly Nursing Scholarships and Loan Repayment Program Requiring Service in a Long-Term Care Facility,** and **12VAC5-510, Guidelines for General Assembly Nursing Scholarships**, which was published 17:11 VA.R. 1828 February 12, 2001.

A new Notice of Intended Regulatory Action is published concurrently in this issue of the Register for 12VAC5-507 to provide details on the implementation of a loan and scholarship program for nurses that would require, in return, an individual's service in a long-term care facility.

Agency Contact: Aileen Edwards Harris, M.S.A., Rural Health and Workforce Programs Manager, Virginia Department of Health, Office of Minority Health and Public Health Policy,109 Governor Street, Suite 1016-East, Richmond, VA 23219, telephone (804) 864-7436.

VA.R. Doc. No. R01-97; Filed July 21, 2010, 3:19 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 Health intends to consider promulgating the following regulation: **12VAC5-507, Nursing Scholarships and Loan Repayment Program Requiring Service in a Long-Term Care Facility.** The purpose of the proposed action is to provide details on the implementation of a loan and scholarship program for nurses that would require, in return, an individual's service in a long-term care facility.

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

Statutory Authority: §§ 32.1-122.6:01 and 54.1-3011.2 of the Code of Virginia.

Public Comment Deadline: September 15, 2010.

Agency Contact: Aileen Harris, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7436, or email aileen.harris@vdh.virginia.gov.

VA.R. Doc. No. R10-1890; Filed July 15, 2010, 3:00 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 Health intends to consider amending the following regulation: **12VAC5-540, Rules and Regulations for the Identification of Medically Underserved Areas in Virginia.** The purpose of the proposed action is to update the process for determining medically underserved areas in Virginia so that more timely and accurate computations will result.

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

Statutory Authority: §§ 32.1-12 and 32.1-122.5 of the Code of Virginia.

Public Comment Deadline: September 15, 2010.

Agency Contact: Kenneth Studer, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7428, or email ken.studer@vdh.virginia.gov.

VA.R. Doc. No. R10-2199; Filed July 15, 2010, 3:01 p.m.

## STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL 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 Behavioral Health and Developmental Services intends to consider amending the following regulation: **12VAC35-105, Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury Services.** The purpose of the proposed action is to allow the Department of Behavioral Health and Developmental Services to establish and collect fees for the licensing services offered by the department.

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

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

Public Comment Deadline: September 15, 2010.

Agency Contact: Les Saltzberg, Director, Office of Licensing, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23219, telephone (804) 786-1747, FAX (804) 371-0092, or email les.saltzberg@dbhds.virginia.gov.

VA.R. Doc. No. R10-2275; Filed July 16, 2010, 12:29 p.m.

# TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending the following regulations: **18VAC65-20, Regulations of the Board of Funeral Directors and Embalmers,** and **18VAC65-40, Regulations for the Funeral Service Internship Program.** The purpose of the proposed action is to consider an increase in fees charged to regulants to meet its statutory responsibility to have sufficient revenue to offset expenses.

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 15, 2010.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email lisa.hahn@dhp.virginia.gov.

VA.R. Doc. No. R10-2522; Filed July 19, 2010, 3:20 p.m.

## BOARD OF LONG-TERM CARE ADMINISTRATORS

### 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 Long-Term Care Administrators intends to consider amending the following regulations: **18VAC95-20, Regulations Governing the Practice of Nursing Home Administrators,** and **18VAC95-30, Regulations Governing the Practice of Assisted Living Facility Administrators**. The purpose of the proposed action is to consider an increase in fees charged to applicants and licensees to have sufficient revenue to offset increased expenditures.

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 15, 2010.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4595, FAX (804) 527-4413, or email ltc@dhp.virginia.gov.

VA.R. Doc. No. R10-2364; Filed July 19, 2010, 4:23 p.m.

## BOARD OF OPTOMETRY

### 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 Optometry intends to consider amending the following regulation: **18VAC105-20, Regulations Governing the Practice of Optometry.** The purpose of the proposed action is to consider an increase in fees charged to licensees to meet its statutory responsibility to have sufficient revenue to cover expenditures.

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 15, 2010.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4466, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. R10-2523; Filed July 19, 2010, 3:21 p.m.

## BOARD OF SOCIAL WORK

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Social Work intends to consider amending the following regulation: **18VAC140-20, Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to consider an increase in fees and a change from a biennial to an annual renewal.

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 15, 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. R10-2391; Filed July 19, 2010, 4:26 p.m.

# TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

## COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

### Withdrawal of Notice of Intended Regulatory Action

The Commission on the Virginia Alcohol Safety Action Program has withdrawn the Notice of Intended Regulatory Action for **24VAC35-50, VASAP Training and Accrediting Manual**, which was published 25:9 VAR 1679 January 5, 2009.

Agency Contact: Richard L. Foy, Technical Instructor, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email rfoy.vasap@state.va.us.

VA.R. Doc. No. R09-1670; Filed July 20, 2010, 12:46 p.m.

## TITLE 1. ADMINISTRATION

### DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

### Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Human Resource Management will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **1VAC55-20. Commonwealth of Virginia Health Benefits Program (amending 1VAC55-20-20, 1VAC55-20-320).**

Statutory Authority: § 2.2-2818 of the Code of Virginia.

Effective Date: September 16, 2010.

Agency Contact: Charles Reed, Associate Director, Department of Human Resource Management, 101 North Fourteenth Street, 13th Floor, Richmond, VA 23219, telephone (804) 786-3124, FAX (804) 371-0231, or email charles.reed@dhrm.virginia.gov.

Summary:

*These amendments increase the limiting age of adult dependent children from age 23 to age 26 and remove any residency and employee financial support requirements that currently apply to otherwise eligible adult children.*

*These provisions go into effect the first day of the plan years following September 23, 2010. Thus, for The Local Choice (TLC) plans the effective date will be October 1, 2010, for some school groups, and July 1, 2010, for the remainder of the TLC plans. The effective date will be July 1, 2011, for the health benefits plan for state employees.*

Part I
General

**1VAC55-20-20. Definitions.**

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

"Accident or health plan" means a plan described in the Internal Revenue Code § 105.

"Administrative services arrangement" means an arrangement whereby a third party administrator agrees to administer all or part of the health benefits program.

"Adoption agreement" means an agreement executed between a local employer and the department specifying the terms and conditions of the local employer's participation in the health benefits program.

"Alternative health benefits plans" means optional medical benefits plans, inclusive of but not limited to HMOs and PPOs, which are offered pursuant to the health benefits program in addition to the basic statewide plan(s).

"Basic statewide plan(s)" means the statewide hospitalization, medical and major medical plan offered at a uniform rate to all state employees pursuant to § 2.2-2818 of the Code of Virginia.

"Benefits administrator" means the person or office designated in the application and adoption agreement to be responsible for the day-to-day administration of the health benefits program at the local level. The benefits administrator is an employee of the agency or local employer that employs the benefits administrator. The benefits administrator is not an agent of the health insurance plan or the Department of Human Resource Management.

"Coordinated service" means a health care service or supply covered under both the program and another health plan. The coordinated service will be provided under the program only to the extent it is not excluded or limited under the program.

"Coordination of benefits" means the establishment of a priority between two or more underwriters which provide health benefits protection covering the same claims incident.

"Department" means the Department of Human Resource Management.

"Dependent" means any person who is determined to be an eligible family member of an employee pursuant to subsection E of 1VAC55-20-320.

"Director" means the Director of the Department of Human Resource Management.

"Dual membership" means the coverage in the health benefits program of the employee and either the spouse or one dependent. This definition does not include coverage of retirees or employees or their spouses who are otherwise covered by Medicare.

"Effective date of coverage" means the date on which a participant is enrolled for benefits under a plan or plans elected under the health benefits program.

"Employee" means a person employed by an employer participating in the health benefits program or, where demanded by the context of this chapter, a retired employee of such an employer. The term "employee" shall include state employees and employees of local employers.

"Employee health insurance fund" or "health insurance funds" means accounts established by the state treasury and maintained by the department within which contributions to the plan shall be deposited.

"Employer" means the entity with whom a person maintains a common law employee-employer relationship. The term "employer" is inclusive of each state agency and of a local employer.

"Employer application" or "application" means the form, to be provided by the department, to be used by the local employer for applying to participate in the health benefits program.

"Enrollment action" means providing the information, which would otherwise be contained on an enrollment form, through an alternative means such as through the world wide web or through an interactive voice response system, for the purpose of securing or changing membership or coverage in the employee health benefits program. Submitting a properly completed enrollment form and taking an enrollment action through an employee self-service system are used interchangeably to indicate equivalent actions.

"Enrollment form" means the form, to be provided by the department, to be used by participants to enroll in a plan or to indicate a change in coverage.

"Experience adjustment" means the adjustment determined by the department, consistent with its actuarial practices, to premiums for the year in which a local employer withdraws from the plan.

"Family membership" means the coverage in the health benefits program of the employee and two or more eligible dependents.

"Health Maintenance Organization" or "HMO" means an entity created under federal law, "The Health Maintenance Organization Act of 1973" (Title XIII of the Public Health Service Act), as amended, or one defined under state law.

"Health benefits program" or "program" means, individually or collectively, the plan or plans the department may establish pursuant to §§ 2.2-1204 and 2.2-2818 of the Code of Virginia.

"Health plan" means:

1. A plan or program offering benefits for, or as a result of, any type of health care service when it is:

a. Group or blanket insurance (including school insurance programs);

b. Blue Cross, Blue Shield, group practice (including HMOs and PPOs), individual practice (including IPAs), or any other prepayment arrangement (including this program) when;

(1) An employer contributes any portion of the premium; or

(2) An employer contracts for the group coverage on behalf of employees; or

(3) It is any labor-management trustee plan, union welfare plan, employer organization plan, or employee benefit organization plan.

2. The term "health plan" refers to each plan or program separately. It also refers to any portion of a plan or program which reserves the right to take into account benefits of other health plans when determining its own benefits. If a health plan has a coordination of benefits provision which applies to only part of its services, the terms of this section will be applied separately to that part and to any other part.

3. A prepaid health care services contract or accident or health plan meeting all the following conditions is not a health plan:

a. One that is individually underwritten;

b. One that is individually issued;

c. One that provides only for accident and sickness benefits; and

d. One that is paid for entirely by the subscriber.

A contract or policy of the type described in this subdivision 3 is not subject to coordination of benefits.

"Impartial health entity" means an organization, which upon written request from the Department of Human Resource Management examines the adverse health benefits claim decision made by the Commonwealth's Third Party Administrator (TPA). The impartial health entity should determine whether the TPA's decision is objective, clinically valid, compatible with established principles of health care, and appropriate under the terms of the contractual obligations to the covered person.

"Insured arrangement" means an accident or health plan underwritten by an insurance company wherein the department's only obligation as it may relate to claims is the payment of insurance company premiums.

"Independent hearing officer" means an individual requested by the director of the department from a list maintained by the Executive Secretary of the Supreme Court to arbitrate disputes which may arise in conjunction with these regulations or the health benefits program.

"Local employees" or "employees of local governments" means all officers and employees of the governing body of any county, city, or town, and the directing or governing body of any political entity, subdivision, branch, or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges or authority capable of exercise by the commission or public authority or body corporate, as distinguished from §§ 15.2-1300, 15.2-1303 or similar statutes, provided that the officers and employees of a social services department, welfare board, mental health and mental retardation services board, or library board of a county, city, or town shall be deemed to be the employees of local government.

"Local employer" means any county, city, or town, school board, and the directing or governing body of any political entity, subdivision, branch or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges or authority capable of exercise by the commission or public authority or body corporate, as distinguished from §§ 15.2-1300, 15.2-1303 of the Code of Virginia, or similar statutes.

"Local officer" means the treasurer, registrar, commissioner of revenue, attorney for the Commonwealth, clerk of a circuit court, sheriff, or constable of any county or city or deputies or employees of any of the preceding local officers.

"Local retiree" means a former local employee who has met the terms and conditions for early, normal or late retirement from a local employer.

"Open enrollment" means the period during which an employee may elect to commence, to waive or to change membership or plans offered pursuant to the health benefits program.

"Part-time employee," as defined by each local employer, means an employee working less than full time whom a local employer has determined to be eligible to participate in the program. The conditions of participation for these employees shall be decided by the local employer in a nondiscriminatory manner.

~~"Participant" means any person actively enrolled and covered by the health benefits program~~ "Participants" means individuals covered by the plan due to their relationship with the employer. They are not covered as dependents under the plan.

"Plan administrator" means the department.

"Preferred provider organization" or "PPO" means an entity through which a group of health care providers, such as doctors, hospitals and others, agree to provide specific medical and hospital care and some related services at a negotiated price.

"Preexisting condition" means a condition which, in the opinion of the plan's medical advisors, displayed signs or symptoms before the participant's effective date of coverage. These signs or symptoms must be ones of which the participant was aware or should reasonably have been aware. The condition is considered preexisting whether or not the participant was seen or treated for the condition. It is also considered preexisting whether or not the signs and symptoms of the condition were correctly diagnosed.

"Primary coverage" means the health plan which will provide benefits first. It does not matter whether or not a claim has been filed for benefits with the primary health plan.

"Retiree" means any person who meets the definition of either a state retiree or a local retiree.

"Secondary coverage" means the health plan under which the benefits may be reduced to prevent duplicate or overlapping coverage.

"Self-funded arrangement" means a facility through which the plan sponsor agrees to assume the risk associated with the type of benefit provided without using an insurance company.

"Single membership" means coverage of the employee only under the health benefits program.

"State" means the Commonwealth of Virginia.

"State agency" means a court, department, institution, office, board, council, or other unit of state government located in the legislative, judicial or executive departments or group of independent agencies, as shown in the Appropriation Act, and which is designated in the Appropriation Act by title and a three-digit agency code.

"State employee" means any person who is regularly employed full time on a salaried basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, no more often than biweekly, in whole or in part, by the Commonwealth or any department, institution, or agency thereof. "State employee" shall include the Governor, Lieutenant Governor, Attorney General, and members of the General Assembly. It includes "judge" as defined in § 51.1-301 of the Code of Virginia and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth.

"State retiree" means a former state employee who has met the terms and conditions for early, normal or late retirement from the Commonwealth.

"Teacher" means any employee of a county, city, or other local public school board.

Part IV
Employee Participation

**1VAC55-20-320. Eligible employees.**

A. State employees.

1. Full-time salaried, classified employees and faculty as defined in 1VAC55-20-20 are eligible for membership in the health benefits program. A full-time salaried employee is one who is scheduled to work at least 32 hours per week or carries a faculty teaching load considered to be full time at his institution.

2. Certain full-time employees in auxiliary enterprises (such as food services, bookstores, laundry services, etc.) at the University of Virginia, Virginia Military Institute and the College of William and Mary as well as other state institutions of higher learning are also considered state employees even though they do not receive a salaried state paycheck. The Athletic Department of Virginia Polytechnic Institute and State University is an example of a local auxiliary whose members are eligible for the program.

3. Certain full-time employees of the Medical College of Virginia Hospital Authority are eligible for the program as long as they are on the authority's payroll and were enrolled in the program on November 1, 1996. They may have payroll deductions for health benefits premiums even if they rotate to the Veterans' Administration Hospital or other acute care facility.

4. Other employees identified in the Code of Virginia as eligible for the program.

5. Classified positions include employees who are fully covered by the Virginia Personnel Act, employees excluded from the Virginia Personnel Act by subdivision 16 of § 2.2-2905 of the Code of Virginia, and employees on a restricted appointment. A restricted appointment is a classified appointment to a position that is funded at least 10% from gifts, grants, donations, or other sources that are not identifiable as continuing in nature. An employee on a restricted appointment must receive a state paycheck in order to be eligible.

B. Local employees.

1. Full-time employees of participating local employers are eligible to participate in the program. A full-time employee is one who meets the definition set forth by the local employer in the employer application.

2. Part-time employees of local employers may participate in the plan if the local employer elects and the election does not discriminate among part-time employees. In order for the local employer to cover part-time employees, the local employer must provide to the department a definition of what constitutes a part-time employee.

The department reserves the right to establish a separate plan for part-time employees.

C. Unavailability of employer-sponsored coverage.

1. Employees, officers, and teachers without access to employer-sponsored health care coverage may participate in the plan. The employers of such employees, officers, and teachers must apply for participation and certify that other employer-sponsored health care coverage is not available. The employers shall collect contributions from such individuals and timely remit them to the department or its designee, act as a channel of communication with the covered employee and otherwise assist the department as may be necessary. The employer shall act as fiduciary with respect to such contributions and shall be responsible for any interest or other charges imposed by the department in accordance with these regulations.

2. Local employees living outside the service area of the plan offered by their local employer shall not be considered as local employees whose local employers do not offer a health benefits plan. For example, a local employee who lives in North Carolina and works in Virginia may live outside the service area of the HMO offered by his employer; however, he may not join the program individually.

3. Employer sponsorship of a health benefits plan will be broadly construed. For example, an employer will be deemed to sponsor health care coverage for purposes of this section and 1VAC55-20-260 if it utilizes § 125 of the Internal Revenue Code or any similar provision to allow employees, officers, or teachers to contribute their portion of the health care contribution on a pretax basis.

4. Individual employees and dependents who are eligible to join the program under the provisions of this subsection must meet all of the eligibility requirements pertaining to state employees except the identity of the employer.

D. Retirees.

1. Retirees are not eligible to enroll in the state retiree health benefits group outside of the opportunities provided in this section.

2. Retirees are eligible for membership in the state retiree group if a completed enrollment form is received within 31 days of separation for retirement. Retirees who remain in the health benefits group through a spouse's state employee membership may enroll in the retiree group at one of three later times: (i) future open enrollment, (ii) within 31 days of a qualifying mid-year event, or (iii) within 31 days of being removed from the active state employee spouse's membership.

3. Membership in the retiree group may be provided to an employee's spouse or dependents who were covered in the active employee group at the time of the employee's death in service.

4. Retirees who have attained the age of 65 or are otherwise covered or eligible for Medicare may enroll in certain plans as determined by the department provided that they apply for such coverage within 31 days of their separation from active service for retirement. Medicare will be the primary payor and the program shall serve as a supplement to Medicare's coverage.

5. Retirees who are ineligible for Medicare must apply for coverage within 31 days of their separation from active service for retirement. In order to receive coverage, the individual must meet the retirement requirements of his employer and receive an immediate annuity.

6. Local employers may offer retiree coverage at their option.

E. Dependents.

1. The following family members may be covered if the employee elects:

a. The employee's spouse.

The marriage must be recognized as legal in the Commonwealth of Virginia.

b. Children. Under the health benefits program, the following eligible children may be covered to the end of the year in which they turn age ~~23 regardless of student status~~ 26 (age requirement is waived for adult incapacitated children)~~, if the child lives at home or is away at school, is not married and receives over one-half of his support from the employee.~~:

(1) Natural ~~and~~ children, adopted children, or children placed for adoption. ~~In the case of natural or adopted children, living at home may mean living with the other parent if the employee is divorced.~~

~~Also, if the biological parents are divorced, the support test is met if a natural or adopted child receives over one-half of his support from either parent or a combination of support from both parents. However, in order for the noncustodial parent to cover the child, the noncustodial parent must be entitled to claim the child as a dependent on his federal income tax return, or the custodial parent must sign a written declaration that he will not claim the child as a dependent on his federal income tax return.~~

(2) Stepchildren. ~~Unmarried stepchildren living with the employee in a parent-child relationship. However, stepchildren may not be covered as a dependent unless their principal place of residence is with the employee and the child is a member of the employee's household. A stepchild must receive over one-half of his support from the employee~~ A stepchild is the natural or legally adopted child of the participant's legal spouse. Such marriage must be recognized by the Commonwealth of Virginia.

(3) Incapacitated children. Adult children who are incapacitated due to a physical or mental health condition, as long as the child was covered by the plan and the incapacitation existed prior to the termination of coverage due to the child attaining the limiting age. The employee must make written application, along with proof of incapacitation, prior to the child reaching the limiting age. Such extension of coverage must be approved by the plan and is subject to periodic review. Should the plan find that the child no longer meets the criteria for coverage as an incapacitated child, the child's coverage will be terminated at the end of the month following notification from the plan to the enrollee. The child must live with the employee as a member of the employee's household and be dependent upon the employee for financial support. In the case of a divorce, living with the spouse will satisfy the condition of living with the employee. Furthermore, the support test is met if either the employee or spouse or combination of the employee and spouse provide over one half of the child's financial support.

Adult incapacitated children of new employees may also be covered, provided that:

(a) The enrollment form is submitted within 31 days of hire;

(b) The child has been covered continuously by group employer coverage since the disability first occurred; and

(c) The disability commenced prior to the child attaining the limiting age of the plan.

The enrollment form must be accompanied by a letter from a physician explaining the nature of the incapacitation, date of onset and certifying that the dependent is not capable of self-support. This extension of coverage must be approved by the plan in which the employee is enrolled.

(4) Other children. A child in which a court has ordered the employee to assume sole permanent custody. ~~The principal place of residence must be with the employee, and the child must a member of the employee's household.~~

Additionally, if the employee or spouse shares custody with the minor child who is the parent of the "other child," then the other child may be covered. ~~The other child, the parent of the other child, and the spouse who has custody must be living in the same household as the employee.~~

When a child loses eligibility, coverage terminates at the end of the month in which the event that causes the loss of eligibility occurs.

There are certain categories of persons who may not be covered as dependents under the program. These include dependent siblings, grandchildren, nieces, and nephews except where the criteria for "other children" are satisfied. Parents, grandparents, aunts, and uncles are not eligible for coverage regardless of dependency status.

VA.R. Doc. No. R10-2476; Filed July 27, 2010, 11:25 a.m.

# TITLE 2. AGRICULTURE

## BOARD OF AGRICULTURE AND CONSUMER SERVICES

### Proposed Regulation

Title of Regulation: **2VAC5-540. Rules and Regulations Pertaining to Carbonated and Still Water Bottling Plants and Beverages (repealing 2VAC5-540-10 through 2VAC5-540-70).**

Statutory Authority: §§ 3.2-5101 and 3.2-5121 of the Code of Virginia.

Public Hearing Information:

September 30, 2010 - 2 p.m. - Department of Agriculture and Consumer Services, 102 Governor Street, 2nd Floor, Board Room, Richmond, VA

Public Comment Deadline: October 15, 2010.

Agency Contact: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8910, FAX (804) 371-7792, TTY (800) 828-1120, or email ryan.davis@vdacs.virginia.gov.

Basis: Sections 3.2-5101 and 3.2-5121 of the Code of Virginia authorize the Board of Agriculture and Consumer Services to adopt regulations, as needed, for the efficient enforcement of the Virginia Food Laws.

Purpose: It is proposed that these regulations be rescinded to resolve the issue of duplicative requirements as the requirements of the subject regulation already exist in the Virginia Food Laws. The requirements ensure that establishments that process carbonated and still water beverages do so in a manner that renders the food or drink safe and unadulterated. Since the requirements of this regulation are already enforced via the Virginia Food Laws, their repeal will not negatively impact the health, safety, or welfare of the citizens of the Commonwealth.

Substance: Substantive changes will be the repeal of these regulations. Requirements relating to the facility, sanitation, restrooms, and infectious diseases have already been incorporated into the Virginia Food Laws.

Issues: The primary advantage of this action to repeal the regulation is to eliminate duplicative requirements. The elimination of these requirements, which are already part of the Virginia Food Laws, will result in the elimination of potential confusion regarding regulatory requirements relative to certain food establishments. Elimination of duplicative provisions will also result in more efficient enforcement of requirements relating to food safety by agents of the Commonwealth, and positively impact the public, the food industry, and the Commonwealth. There do not appear to be any disadvantages to this particular action.

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

Summary of the Proposed Amendments to Regulation. The Virginia Department of Agriculture and Consumer Services (VDACS) proposes to repeal these regulations.

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

Estimated Economic Impact. Almost all elements of these regulations are included in the Virginia Food Laws (Title 3.2, Chapter 51 of the Code of Virginia). One exception is the regulatory requirement for a separate syrup room. According to VDACS separate syrup rooms are not necessary to maintain sanitary conditions. Since requiring a separate syrup room can increase costs for firms and there is essentially no benefit to the requirement, eliminating this requirement with the proposed repeal of the regulations will produce a net benefit. Eliminating regulations that are duplicative of the Code of Virginia will have no impact beyond reducing potential future confusion when and if the Virginia Food Laws are amended.

Businesses and Entities Affected. The proposed amendments affect the 42 carbonated and still water bottling firms in Virginia.[1]

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

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

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

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

[1] Data Source: Virginia Department of Agriculture and Consumer Services

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

Summary:

*This regulation provides basic requirements for carbonated and still water bottling plants. The repeal of this regulation is requested because the essential elements of the regulation have already been incorporated into the Virginia Food Laws, Chapter 51 (§ 3.2-5100 et seq.) of Title 3.2 of the Code of Virginia.*

VA.R. Doc. No. R09-2088; Filed July 16, 2010, 4:12 p.m.

# TITLE 8. EDUCATION

## STATE BOARD OF EDUCATION

### Final Regulation

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

Title of Regulation: **8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8VAC20-131-360).**

Statutory Authority: § 22.1-253.13:3 of the Code of Virginia.

Effective Date: September 15, 2010.

Agency Contact: Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or email anne.wescott@doe.virginia.gov.

Summary:

*The amendments delay the effective date of these regulations, with the exception of the Graduation and Completion Index prescribed in 8VAC20-131-280 and 8VAC20-131-300 and the other provisions of the regulations already in effect, until the 2011-2012 school year, pursuant to Chapter 378 of the 2010 Acts of the Assembly.*

**8VAC20-131-360. Effective date.**

The provisions in 8VAC20-131-30 B relating to double testing and the provisions in 8VAC20-131-60 C relating to Virtual Virginia shall become effective July 31, 2009. Schools with a graduating class shall meet prescribed thresholds on a graduation and completion rate index as prescribed in 8VAC20-131-280 and 8VAC20-131-300 for accreditation ratings earned in 2010-2011 and awarded in 2011-2012. Unless otherwise specified, the remainder of these regulations shall be effective beginning with the ~~2010-2011~~ 2011-2012 academic year.

VA.R. Doc. No. R10-2501; Filed July 20, 2010, 2:39 p.m.

# TITLE 9. ENVIRONMENT

## STATE WATER CONTROL BOARD

### Final Regulation

Title of Regulation: **9VAC25-580. Underground Storage Tanks: Technical Standards and Corrective Action Requirements (amending 9VAC25-580-10, 9VAC25-580-20, 9VAC25-580-50, 9VAC25-580-120, 9VAC25-580-130, 9VAC25-580-140; adding 9VAC25-580-125, 9VAC25-580-370).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.34:9 of the Code of Virginia; 40 CFR Parts 280 and 281.

Effective Date: September 15, 2010.

Agency Contact: Russell Ellison, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4269, FAX (804) 698-4266, or email russell.ellison@deq.virginia.gov.

Summary:

*Pursuant to the requirements of the federal Energy Policy Act of 2005, the regulation is amended to accomplish the following: (i) require secondary containment of all new and replacement underground storage tanks (USTs) and associated piping within 1,000 feet of an existing community water system (this includes the piping distribution system) or other potable drinking water well; (ii) develop criteria for determining what tanks are ineligible for petroleum delivery, the methods for marking the tanks, providing notice to owners/operators and delivery companies that the tanks are ineligible, and reclassifying ineligible tanks as eligible; and (iii) require training for certain classes of UST operators. The goal of the amendments is to reduce the number and severity of petroleum leaks from UST systems by strengthening pollution prevention requirements and encouraging UST owners and operators to maintain compliant UST systems.*

*Since publication of the proposal, 9VAC25-580-125 has been modified to clarify when a deliverer is responsible for delivering to an ineligible tank, and, in 9VAC25-580-370, the requirement for certain operators to be on site within 24 hours and the time frame for retention of training records has been modified.*

*The full text of this new federal legislation can be found at http://www.epa.gov/oust/fedlaws/nrg05_01.htm. This action consolidates two Notices of Intended Regulatory Action: Amendment Regarding Operator Training for Owners and Operators (24:14 VA.R. 1887 March 17, 2008) and Incorporation of Requirements of Federal Energy Policy Act of 2005 (23:25 VA.R. 4100 August 20, 2007).*

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

Part I
Definitions, Applicability and Interim Prohibition

**9VAC25-580-10. Definitions.**

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

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Below ground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Board" means the State Water Control Board.

"Building official" means the executive official of the local government building department empowered by § 36-105 of the Code of Virginia to enforce and administer the Virginia Uniform Statewide Building Code (USBC).

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC § 9601 et seq.).

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Community water system" means a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"De minimis" means trivial and beyond the intent of regulation, as that term is used at 53 Fed. Reg. 37108-37109.

"Delivery prohibition" is prohibiting the delivery, deposit, or acceptance of product to an underground storage tank system that has been determined to be ineligible by the board for such delivery, deposit, or acceptance.

"Delivery prohibition tag" means a tag, device, or mechanism on the tank's fill pipes that clearly identifies an underground storage tank system as ineligible for product delivery. The tag or device is easily visible to the product deliverer and clearly states and conveys that it is unlawful to deliver to, deposit into, or accept product into the ineligible underground storage tank system. The tag, device, or mechanism is generally tamper resistant.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Director" means the director of the Department of Environmental Quality.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing community water system or existing potable drinking water well" means a community water system or potable drinking water well is in place when a new installation or replacement of an underground tank, piping, or motor fuel dispensing system begins.

"Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

1. The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if

2. a. Either a continuous on-site physical construction or installation program has begun; or

b. The owner or operator has entered into contractual obligations-which cannot be cancelled or modified without substantial loss-for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of

1980 (42 USC § 9601 et seq.) (but not including any substance regulated as a hazardous waste under subtitle C of RCRA) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine. This definition applies to blended petroleum motor fuels such as biodiesel and ethanol blends that contain more than a de minimis amount of petroleum or petroleum-based substance.

"Motor fuel dispenser system" means the motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system. The equipment necessary to connect the motor fuel dispenser to the underground storage tank system may include check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.

"New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988 (See also "existing tank system").

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Part VII (9VAC25-580-310 et seq.) of this chapter.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

1. In the case of a UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or the tubular conduit that is constructed of nonearthen materials that routinely contains and conveys regulated substances from the underground tank(s) to the dispenser(s) or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the underground tank(s) to the dispenser(s). Pipe or piping does not include vent, vapor recovery, or fill lines.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Potable drinking water well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets

groundwater that supplies water for a noncommunity public water system, or otherwise supplies water for household use (consisting of drinking, bathing, cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

"Product deliverer" is any person who delivers or deposits product into an underground storage tank.

"Public water system" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system and (ii) any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system."

"RCRA" means the federal Resource Conservation and Recovery Act of 1976 as amended (42 USC § 6901 et seq.).

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 USC § 9601 et seq.), but not any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976 (42 USC § 6901 et seq.); and

2. Petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore a tank or UST system component that has caused a release of product from the UST system.

"Replace" means, when applied to underground storage tanks and piping, to remove an underground storage tank and install a new underground storage tank or to remove and put back greater than 50% of the length of a piping run excluding connectors (such as flexible connectors) connected to an underground storage tank.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986.

"Secondary containment" means a release prevention and release detection system for an underground tank and/or piping. For purposes of this definition, release prevention means an underground tank and/or piping having an inner and outer barrier and release detection means a method of monitoring the space between the inner and outer barriers for a leak or release of regulated substances from the underground tank and/or piping.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm water or waste water collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Underdispenser containment" means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

2. Tank used for storing heating oil for consumption on the premises where stored;

3. Septic tank;

4. Pipeline facility (including gathering lines) ~~regulated under~~:

a. ~~The~~ Regulated under the Natural Gas Pipeline Safety Act of 1968 (49 USC ~~App.~~ § 1671~~,~~ et seq.);

b. ~~The~~ Regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC ~~App.~~ § 2001~~,~~ et seq.); or

c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivisions 4 a or 4 b of this definition;

5. Surface impoundment, pit, pond, or lagoon;

6. Storm water or wastewater collection system;

7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

**9VAC25-580-20. Applicability.**

A. The requirements of this chapter apply to all owners and operators of an UST system as defined in 9VAC25-580-10 except as otherwise provided in subsections B, C, and D of this section. Any UST system listed in subsection C of this section must meet the requirements of 9VAC25-580-30.

B. The following UST systems are excluded from the requirements of this chapter:

1. Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act (33 USC § 1251 et seq.), or a mixture of such hazardous waste and other regulated substances.

2. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or § 307(b) of the Clean Water Act.

3. Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

4. Any UST system whose capacity is 110 gallons or less.

5. Any UST system that contains a de minimis concentration of regulated substances.

6. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

C. Deferrals. Parts II, III, IV, V, ~~and~~ VII, and IX of this chapter do not apply to any of the following types of UST systems:

1. Wastewater treatment tank systems;

2. Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC § 2011 et seq.);

3. Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A;

4. Airport hydrant fuel distribution systems; and

5. UST systems with field-constructed tanks.

D. Deferrals. Part IV does not apply to any UST system that was installed before [ September 15, 2010 (i.e., ] the effective date of the secondary containment requirements in subdivision 7 of 9VAC25-580-50 [ ) ] and stores fuel solely for use by emergency power generators.

Part II
UST Systems: Design, Construction, Installation, and Notification

**9VAC25-580-50. Performance standards for new UST systems.**

Owners and operators must obtain a permit, the required inspections and a Certificate of Use issued in accordance with the provisions of the Virginia Uniform Statewide Building Code. No UST system shall be installed or placed into use without the owner and operator having obtained the required permit, inspections and Certificate of Use from the building official under the provisions of the Virginia Uniform Statewide Building Code ( [ ~~Chapter 6 (~~ ] § 36-97 et seq. [ ~~) of Title 36~~ ] of the Code of Virginia).

In the case of state-owned facilities the Department of General Services shall function as the building official in accordance with § 36-98.1 of the Code of Virginia.

In the case of federal facilities the building official must be contacted. Owners and operators must obtain a permit, the required inspections and a Certificate of Use must be issued in accordance with the provisions of the Virginia Uniform Statewide Building Code.

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

1. Tanks.

Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

a. The tank is constructed of fiberglass-reinforced plastic;

NOTE: The following industry codes may be used to comply with subdivision 1 a of this section: Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriters Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

b. The tank is constructed of steel and cathodically protected in the following manner:

(1) The tank is coated with a suitable dielectric material;

(2) Field-installed cathodic protection systems are designed by a corrosion expert;

(3) Impressed current systems are designed to allow determination of current operating status as required in subdivision 3 of 9VAC25-580-90; and

(4) Cathodic protection systems are operated and maintained in accordance with 9VAC25-580-90; or

NOTE: The following codes and standards may be used to comply with subdivision 1 b of this section:

(a) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

(b) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";

(c) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

(d) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58 "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

c. The tank is constructed of a steel-fiberglass-reinforced-plastic composite; or

NOTE: The following industry codes may be used to comply with subdivision 1 c of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

d. The tank construction and corrosion protection are determined by the board to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than subdivisions 1 a through c of this section.

2. Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

a. The piping is constructed of fiberglass-reinforced plastic.

NOTE: The following codes and standards may be used to comply with subdivision 2 a of this section:

(1) Underwriters Laboratories Subject 971, "~~UL Listed Non-Metal Pipe~~ Nonmetallic Underground Piping for Flammable Liquids";

(2) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(3) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(4) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

b. The piping is constructed of steel and cathodically protected in the following manner:

(1) The piping is coated with a suitable dielectric material;

(2) Field-installed cathodic protection systems are designed by a corrosion expert;

(3) Impressed current systems are designed to allow determination of current operating status as required in subdivision 3 of 9VAC25-580-90; and

(4) Cathodic protection systems are operated and maintained in accordance with 9VAC25-580-90; or

NOTE: The following codes and standards may be used to comply with subdivision 2 b of this section:

(a) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(b) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

(c) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(d) National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

c. The piping construction and corrosion protection are determined by the board to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subdivisions 2 a through b of this section.

3. Spill and overfill prevention equipment.

a. Except as provided in subdivision 3 b of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(2) Overfill prevention equipment that will:

(a) Automatically shut off flow into the tank when the tank is no more than 95% full;

(b) Alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm; or

(c) Restrict the flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

b. Owners and operators are not required to use the spill and overfill prevention equipment specified in subdivision 3 a of this section if:

(1) Alternative equipment is used that is determined by the board to be no less protective of human health and the environment than the equipment specified in subdivision 3 a (1) or (2) of this section; or

(2) The UST system is filled by transfers of no more than 25 gallons at one time.

4. Installation. All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

NOTE: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of subdivision 4 of this section:

a. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";

b. Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

c. American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."

NOTE: These industry codes require that prior to bringing the system into use the following tests be performed: (i) tank tightness test (air); (ii) pipe tightness test (air or hydrostatic); and (iii) precision system test in accordance with NFPA 329 (detection of .05 gal/hr leak rate).

5. Certification of installation. All owners and operators must ensure that one or more of options a through d of the following methods of certification, testing, or inspection is performed, and a Certificate of Use has been issued in accordance with the provisions of the Virginia Uniform Statewide Building Code to demonstrate compliance with subdivision 4 of this section. A certification of compliance on the UST Notification form must be submitted to the board in accordance with 9VAC25-580-70.

a. The installer has been certified by the tank and piping manufacturers;

b. The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;

c. All work listed in the manufacturer's installation checklists has been completed; or

d. The owner and operator have complied with another method for ensuring compliance with subdivision 4 of this section that is determined by the board to be no less protective of human health and the environment.

6. Release detection. Release detection shall be provided in accordance with Part IV (9VAC25-580-130 et seq.) of this chapter.

7. Secondary containment.

a. Each new or replaced petroleum underground storage tank, or piping connected to any petroleum underground storage tank, installed within 1,000 feet of any existing community water system or existing potable drinking water well must be secondarily contained in accordance with 9VAC25-580-140 A. In the case of a replacement of a petroleum underground storage tank or the piping connected to the petroleum underground storage tank, the secondary containment requirements shall apply only to the specific petroleum underground storage tank or piping run being replaced, not to other petroleum underground storage tanks and connected pipes comprising such system. The entire piping run must be secondarily contained if more than 50% of the length of a piping run connected to a petroleum underground storage tank is to be replaced.

b. Motor fuel dispenser systems. Each new motor fuel dispenser system installed within 1,000 feet of any existing community water system or existing potable drinking water well shall have underdispenser containment in accordance with 9VAC25-580-140 B. A motor fuel dispenser system is considered new when:

(1) A dispenser is installed at a location where there previously was no dispenser (new UST system or new dispenser location at an existing UST system), or

(2) An existing dispenser is removed and replaced with another dispenser and the equipment used to connect the dispenser to the UST system is replaced. This equipment may include unburied flexible connectors or risers or other transitional components that are beneath the dispenser and connect the dispenser to the piping.

c. If an owner or operator intends to install a new petroleum UST system that is located greater than 1,000 feet from any existing community water system or existing potable drinking water well and the owner or operator will install a potable drinking water well at the new facility that is within 1,000 feet of the petroleum underground storage tanks, piping, or motor fuel dispenser systems as part of the new UST installation, then secondary containment and underdispenser containment are required, regardless of whether the well is installed before or after the petroleum underground storage tanks, piping, and motor fuel dispenser systems are installed.

d. A tank owner or operator who intends to install an UST system or motor fuel dispenser system that will not meet the requirements in subdivision 7 a or c of this subsection must demonstrate to the board that the distance from the proposed new or replacement petroleum underground storage tank or piping or motor fuel dispenser system to the existing community water system or existing potable drinking water well is greater than 1,000 feet.

(1) The tank owner or operator shall make such a demonstration by submitting to the board a map showing the distance from the proposed new or replacement petroleum underground storage tank or piping or motor fuel dispenser system to the existing community water system or existing potable drinking water well. If the distance is greater than 1,000 feet but less than 2,000 feet, the map must be prepared by a licensed professional surveyor. If the distance is greater than 2,000 feet, the map is not required to be prepared by a licensed professional surveyor. The tank owner or operator must submit the map to the board at least 30 days prior to the installation.

(2) The map must delineate the distance from the proposed new or replacement petroleum underground storage tank or piping or motor fuel dispenser system to the closest existing community water system or existing potable drinking water well. The distance must be measured from the closest part of the proposed new or replacement petroleum underground storage tank or piping or motor fuel dispenser system to:

(a) The closest part of the nearest existing community water system including such components as the location of the wellhead(s) for ground water or location of the intake point(s) for surface water, water lines, processing tanks, and water storage tanks; and water distribution or service lines under the control of the community water system operator; and

(b) The wellhead of the nearest existing potable drinking water well.

e. The requirement for secondary containment does not apply to:

(1) Petroleum underground storage tanks that are not new or not replaced in a manifolded UST system;

(2) Piping runs that are not new or not replaced on petroleum underground storage tanks with multiple piping runs;

(3) Suction piping that meets the requirements at 9VAC 25-580-140 C 2 b [ (1) through (5) ] or piping that manifolds two or more petroleum USTs together;

(4) Repairs meant to restore a petroleum underground storage tank, pipe, or dispenser to operating condition. For purposes of this subsection, a repair is any activity that does not meet the definition of "replace"; and

(5) Other instances approved by the board where equivalent protection is provided.

**9VAC25-580-120. Reporting and recordkeeping.**

Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the board, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to § 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

1. Reporting. Owners and operators must submit the following information to the board:

a. Notification for all UST systems (9VAC25-580-70), which includes certification of installation for new UST systems ~~(9VAC25-580-50 5)~~ (subdivision 5 of 9VAC25-580-50),

b. Reports of all releases including suspected releases (9VAC25-580-190), spills and overfills (9VAC25-580-220), and confirmed releases (9VAC25-580-240);

c. Corrective actions planned or taken including initial abatement measures (9VAC25-580-250), site characterization (9VAC25-580-260), free product removal (9VAC25-580-270), and corrective action plan (9VAC25-580-280); and

d. An amended notification form must be submitted within 30 days after permanent closure or change-in-service (9VAC25-580-320).

2. Recordkeeping. Owners and operators must maintain the following information:

a. Documentation of operation of corrosion protection equipment (9VAC25-580-90);

b. Documentation of UST system repairs ~~(9VAC25-580-110 6)~~ (subdivision 6 of 9VAC25-580-110);

c. Recent compliance with release detection requirements (9VAC25-580-180); and

d. Results of the site investigation conducted at permanent closure (9VAC25-580-350).

e. Documentation of operator training required by 9VAC25-580-125, including verification of training for current Class A, Class B, and Class C operators, and current list of operators and written instructions or procedures for Class C operators in accordance with 9VAC25-580-125 (relating to operator training).

3. Availability and maintenance of records. Owners and operators must keep the records required either:

a. At the UST site and immediately available for inspection by the board; or

b. At a readily available alternative site and be provided for inspection to the board upon request.

In the case of permanent closure records required under 9VAC25-580-350, owners and operators are also provided with the additional alternative of mailing closure records to the board if they cannot be kept at the site or an alternative site as indicated above.

~~Part IV~~
~~Release Detection~~

**9VAC25-580-125. Operator training.**

A. Definitions.

1. For purposes of this section, "Class A operator" means an operator who has primary responsibility to operate and maintain the underground storage tank system and facility. The Class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements. In general, Class A operators focus on the broader aspects of the underground storage tank statutory and regulatory requirements and standards necessary to properly operate and maintain the underground storage tank system and facility.

2. For purposes of this section, "Class B operator" means an operator who implements applicable underground storage tank regulatory requirements and standards in the

field or at the underground storage tank facility. A Class B operator oversees and implements the day-to-day aspects of operations, maintenance, and recordkeeping for the underground storage tanks at one or more facilities.

3. For purposes of this section, "Class C operator" means the person responsible for responding to alarms or other indications of emergencies caused by spills or releases from underground storage tank systems and equipment failures. A Class C operator, generally, is the first line of response to events indicating emergency conditions.

B. Requirements for trained operators.

1. Owners and operators of UST systems shall designate Class A, Class B, and Class C operators for each UST system or facility that has underground storage tanks.

a. A person may be designated for more than one class of operator.

b. Any person designated for more than one class of operator shall successfully complete the required training under subsection C of this section for each operator class for which he is designated.

c. Persons trained in accordance with subsection C of this section may perform operator duties consistent with their training when employed or contracted by the tank owner or operator to perform these functions.

2. Designated operators shall successfully complete required training under subsection C of this section no later than August 8, 2012.

3. Class A operators shall be familiar with training requirements for each class of operator and may provide required training for Class C operators.

4. Class B operators shall be familiar with Class B and Class C operator responsibilities and may provide training for Class C operators.

5. Trained operators shall be readily available to respond to suspected/confirmed releases, other unusual operating conditions and equipment shut-offs or failures.

a. The Class A or Class B operator shall be available for immediate telephone consultation when an UST facility is in operation. A Class A or Class B operator shall be able to be onsite at the facility within [ ~~24 hours~~ a reasonable time to perform necessary functions ].

b. For manned facilities, a Class C operator shall be onsite whenever the UST facility is in operation. After [ ~~effective date~~ September 15, 2010, ] written instructions or procedures shall be maintained and visible at manned UST facilities for persons performing duties of the Class C operator to follow and to provide notification necessary in the event of emergency conditions.

c. For unmanned facilities, a Class C operator shall be available for immediate telephone consultation and shall be able to be onsite within [ ~~two hours of being contacted~~ a reasonable time to perform necessary functions ]. Emergency contact information shall be prominently displayed at the site. After [ ~~effective date~~ September 15, 2010, ] written instructions or procedures shall be maintained and visible at unmanned UST facilities for persons performing duties of the Class C operator to follow and to provide notification necessary in the event of emergency conditions.

C. Required training.

1. Class A operators shall successfully complete a training course approved by the board that includes a general knowledge of UST system requirements. Training shall provide information that should enable the operator to make informed decisions regarding compliance and ensuring that appropriate persons are fulfilling operation, maintenance, and recordkeeping requirements and standards of this chapter and/or federal underground storage tank requirements in 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of underground storage tanks (UST)), including, at a minimum, the following:

a. Spill and overfill prevention;

b. Release detection and related reporting requirements;

c. Corrosion protection;

d. Emergency response;

e. Product and equipment compatibility;

f. Financial responsibility;

g. Notification and storage tank registration requirements;

h. Temporary and permanent closure requirements; and

i. Class B and Class C operator training requirements.

2. Class B operators shall successfully complete a training course approved by the board that includes an in-depth understanding of operation and maintenance aspects of UST systems and related regulatory requirements. Training shall provide specific information on the components of UST systems, materials of construction, methods of release detection and release prevention applied to UST systems and components. Training shall address operation and maintenance requirements of this chapter and/or federal underground storage tank requirements in 40 CFR Part 280, including, at a minimum, the following:

a. Spill and overfill prevention;

b. Release detection and related reporting requirements;

c. Corrosion protection and related testing;

d. Emergency response;

e. Product and equipment compatibility;

f. Reporting and recordkeeping requirements; and

g. Class C operator training requirements.

3. Class C operators. At a minimum, training provided by the tank owner or Class A or Class B operator shall enable the Class C operator to take action in response to emergencies caused by spills or releases and alarms from an underground storage tank. Training shall include written instructions or procedures for the Class C operator to follow and to provide notification necessary in the event of emergency conditions.

4. Successful completion for Class A and Class B operators means completion of the entire training course and demonstration of knowledge of the course material as follows:

a. Receipt of a passing grade (a score of 80% or better) on an examination of material presented in the training course, or demonstration through practical (hands-on) application to the trainer of operation and maintenance checks of underground storage tank equipment, including performance of release detection at the UST facility, at the conclusion of onsite training; and

b. Receipt of a training certificate by an approved trainer upon verification of successful completion of training under this section.

5. Reciprocity. The board may also recognize successful completion of Class A and Class B operator training on regulatory standards consistent with 40 CFR Part 280, which is recognized by other state or implementing agencies and which is approved by EPA as meeting operator training grant guidelines published by EPA.

6. The tank owner and operator shall incur the costs of the training.

D. Timing of training.

1. An owner and operator shall ensure that Class A, Class B and Class C operators are trained as soon as practicable after [ ~~effective date~~ September 15, 2010, ] contingent upon availability of approved training providers, but not later than August 8, 2012.

2. When a Class A or Class B operator is replaced after August 8, 2012, a new operator shall be trained within 60 days of assuming duties for that class of operator.

3. Class C operators shall be trained before assuming duties of a Class C operator. After [ ~~effective date~~ September 15, 2010, ] written instructions or procedures shall be provided to Class C operators to follow and to provide notification necessary in the event of emergency conditions. Class C operators shall be briefed on these instructions or procedures at least annually (every 12 months), which may be concurrent with annual safety training required under Occupational Safety and Health Administration, 29 CFR Part 1910 (relating to Occupational Safety and Health Standards).

E. Retraining.

1. Owners and operators of UST systems shall ensure that Class A and B operators in accordance with subsection C of this section are retrained if the board determines that the UST system is out of compliance with the requirements of 9VAC25-580-30 through 9VAC25-580-190. At a minimum, Class A and Class B operators shall successfully complete retraining in the areas identified as out of compliance.

2. Class A and B operators shall complete training pursuant to this subsection no later than 90 days from the date the board identifies the noncompliance.

F. Documentation.

1. Owners and operators of underground storage tank facilities shall prepare and maintain a list of designated Class A, Class B, and Class C operators. The list shall represent the current Class A, Class B, and Class C operators for the UST facility and shall include:

a. The name of each operator, class of operation trained for, and the date each operator successfully completed initial training and refresher training, if any.

b. For Class A and Class B operators that are not permanently onsite or assigned to more than one facility, telephone numbers to contact the operators.

2. A copy of the certificates of training for Class A and Class B operators shall be on file [ as long as each operator serves in that capacity at the facility or three years, whichever is longer, ] and readily available [ , ] and a copy of the facility list of Class A, Class B, and Class C operators and Class C operator instructions or procedures shall be kept onsite and immediately available for manned UST facilities and readily available for unmanned facilities (see subdivision 2 e of 9VAC25-580-120 relating to reporting and recordkeeping).

3. Class C operator and owner contact information, including names and telephone numbers, and any emergency information shall be conspicuously posted at unmanned facilities.

Part IV
Release Detection

**9VAC25-580-130. General requirements for all petroleum and hazardous substance UST systems.**

A. Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

3. Meets the performance requirements in 9VAC25-580-160 or 9VAC25-580-170, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990, except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in ~~subsections~~ subdivisions 2, 3 and 4 of 9VAC25-580-160 or subdivisions 1 and 2 of 9VAC25-580-170 with a probability of detection of 0.95 and a probability of false alarm of 0.05.

B. When a release detection method operated in accordance with the performance standards in 9VAC25-580-160 or 9VAC25-580-170 indicates a release may have occurred, owners and operators must notify the board in accordance with Part V (9VAC25-580-190 et seq.) of this chapter.

C. Owners and operators of all UST systems must comply with the release detection requirements of this part by December 22 of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

| Year system was installed | Year when release detection is required (by December 22 of the year indicated) | | | | |
|---|---|---|---|---|---|
| | 1989 | 1990 | 1991 | 1992 | 1993 |
| Before 1965 or date unknown | RD | P | | | |
| 1965-1969 | | P/RD | | | |
| 1970-1974 | | P | RD | | |
| 1975-1979 | | P | | RD | |
| 1980-1988 | | P | | | RD |

New tanks (after December 22, 1988) immediately upon installation.

P = Must begin release detection for all pressurized piping in accordance with subdivision C 2 a of 9VAC25-580-140.

RD = Must begin release detection for tanks and suction piping in accordance with ~~subsection~~ subdivisions C 1 and ~~subdivision~~ C 2 b of 9VAC25-580-140, and 9VAC25-580-150.

D. Any existing UST system that cannot apply a method of release detection that complies with the requirements of this part must complete the closure procedures in Part VII (9VAC25-580-310 et seq.) of this chapter by the date on which release detection is required for that UST system under subsection C of this section.

**9VAC25-580-140. Requirements for petroleum UST systems.**

A. Owners and operators of petroleum UST systems required to have secondary containment under subdivision 7 of 9VAC25-580-50 must provide secondary containment and release detection for tanks and piping as follows:

1. Secondary containment systems must be designed, constructed, and installed to:

a. Contain regulated substances released from the tank system until they are detected and removed;

b. Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

c. Be checked for evidence of a release at least every 30 days.

2. Double-walled tanks must be designed, constructed, and installed to:

a. Contain a release from any portion of the inner tank within the outer wall; and

b. Detect the failure of the inner wall.

3. External liners (including vaults) must be designed, constructed, and installed to:

a. Contain 100% of the capacity of the largest tank within its boundary;

b. Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

c. Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

4. Underground piping must be equipped with secondary containment that satisfies the requirements of subdivision 1 of this subsection (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with

an automatic line leak detector in accordance with subdivision 1 of 9VAC25-580-170.

5. Perform interstitial monitoring in accordance with subdivision 7 of 9VAC 25-580-160.

B. Owners and operators of petroleum USTs required to have secondary containment under subdivision 7 of 9VAC25-580-50 must have motor fuel underdispenser containment that is liquid-tight on its sides, bottom, and at any penetrations; be compatible with the substance conveyed by the piping; and allow for visual inspection and access to the components in the containment system or be monitored.

C. Owners and operators of petroleum UST systems not required to have secondary containment under subdivision 7 of 9VAC25-580-50 must provide release detection for tanks and piping as follows:

1. Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in ~~subsections~~ subdivisions 4 through 8 of 9VAC25-580-160 except that:

a. UST systems that meet the performance standards in ~~subsections~~ subdivisions 1 through 5 of 9VAC25-580-50 or ~~subsections~~ subdivisions 1 through 4 of 9VAC25-580-60 may use both monthly inventory control requirements in ~~subsection~~ subdivision 1 or 2 of 9VAC25-580-160, and tank tightness testing (conducted in accordance with ~~subsection~~ subdivision 3 of 9VAC25-580-160 at least every five years until December 22, 1998, or until 10 years after the tank is installed or upgraded under ~~subsection~~ subdivision 2 of 9VAC25-580-60, whichever is later;

b. UST systems that do not meet the performance standards in 9VAC25-580-50 or 9VAC25-580-60 may use monthly inventory controls (conducted in accordance with ~~subsection~~ subdivision 1 or 2 of 9VAC25-580-160) and annual tank tightness testing (conducted in accordance with ~~subsection~~ subdivision 3 of 9VAC25-580-160) until December 22, 1998, when the tank must be upgraded under 9VAC25-580-60 or permanently closed under 9VAC25-580-320; and

c. Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with ~~subsection~~ subdivision 2 of 9VAC25-580-160).

2. Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

a. Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(1) Be equipped with an automatic line leak detector conducted in accordance with subdivision 1 of 9VAC25-580-170; and

(2) Have an annual line tightness test conducted in accordance with subdivision 2 of 9VAC25-580-170 or have monthly monitoring conducted in accordance with subdivision 3 of 9VAC25-580-170.

b. Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with subdivision 2 of 9VAC25-580-170, or use a monthly monitoring method conducted in accordance with subdivision 3 of 9VAC25-580-170. No release detection is required for suction piping that is designed and constructed to meet the following standards:

(1) The below-grade piping operates at less than atmospheric pressure;

(2) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(3) Only one check valve is included in each suction line;

(4) The check valve is located directly below and as close as practical to the suction pump; and

(5) A method is provided that allows compliance with subdivisions 2 b (2) through (4) of this ~~section~~ subsection to be readily determined.

**9VAC25-580-370. Requirements for delivery prohibition.**

A. No person shall deliver to, deposit into, or accept a petroleum product or other regulated substance into an underground storage tank that has been identified [ under subdivision G 2 of this section ] by the board to be ineligible for such delivery, deposit, or acceptance. Unless authorized in writing by the board, no person shall alter, deface, remove, or attempt to remove a tag that prohibits delivery, deposit, or acceptance of a petroleum product or other regulated substance to an underground storage tank.

B. When an inspection or other information provides reason to believe one or more of the following violations exists, the board shall initiate a proceeding in accordance with subsection D of this section:

1. Spill prevention equipment is not installed on the UST system properly as required by 9VAC25-580-50 or 9VAC25-580-60 or is disabled;

2. Overfill protection equipment is not installed on the UST system properly as required by 9VAC25-580-50 or 9VAC25-580-60 or is disabled;

3. Release detection equipment is not installed on the UST system properly or is disabled or a release detection method is not being performed as required by 9VAC25-580-50 or 9VAC25-580-60;

4. Corrosion protection equipment is not installed on the UST system properly as required by 9VAC25-580-50 or 9VAC25-580-60 or is disabled;

5. Secondary containment is not installed on the UST system properly as required by 9VAC25-580-50, 9VAC25-580-60, or 9VAC25-580-150 or is disabled; or

6. The board has reason to believe that an UST system is leaking and the owner or operator has failed to initiate and complete the investigation and confirmation requirements of 9VAC25-580-190 through 9VAC25-580-210.

C. For purposes of subsection B of this section, spill prevention, overfill prevention, corrosion protection, release detection, or secondary containment equipment that is not verifiable as installed is not installed.

D. The board shall provide written notice to the owner and operator pursuant to subdivision G 1 of this section that it will conduct an informal fact finding pursuant to § 2.2-4019 of the Code of Virginia to determine whether the underground storage tank(s) shall be ineligible for delivery, deposit, or acceptance of a petroleum product or other regulated substance. The fact finding shall be scheduled as soon as practicable after the notice, and within 10 business days in any event. Upon a finding to impose delivery prohibition, the board shall affix a tag to the fill pipe of the underground storage tank(s) prohibiting delivery, deposit, or acceptance of a petroleum product or other regulated substance.

E. When the board issues a notice of alleged violation based on an inspection or other information that provides reason to believe a UST system is not in compliance with the requirements of Part II, III, or IV of this chapter not listed in subsection B of this section, the requirements of 9VAC25-580-240 through 9VAC25-580-280, or the requirements of 9VAC25-590 (Petroleum Underground Storage Tank Financial Responsibility Requirements), and the owner or operator fails to comply with the notice of alleged violation within the time prescribed by the board, the board may proceed in accordance with subsection D of this section.

F. The board may classify all underground storage tanks containing petroleum or any other regulated substance at a facility as ineligible for delivery, deposit, or acceptance of a petroleum product or other regulated substance if one or more underground storage tanks at the facility has been classified as ineligible for more than 90 days and the ineligible underground storage tank(s) has neither been closed in accordance with 9VAC25-580-310 or 9VAC25-580-320 nor returned to compliance. The board shall provide written notice to the owner and operator pursuant to subdivision G 1 of this section that it will conduct an informal fact finding pursuant to § 2.2-4019 of the Code of Virginia to determine whether all the underground storage tanks shall be ineligible for delivery, deposit, or acceptance of a petroleum product or other regulated substance. The fact finding shall be scheduled as soon as practicable after the notice, and within 10 business days in any event.

G. Notice.

1. The board shall provide written notice of an informal fact finding to consider delivery prohibition to the owner and operator. The notice shall meet the requirements of § 2.2-4019 of the Code of Virginia. The notice shall further advise the owner and operator of the possibility of a special order pursuant to subsection I of this section.

2. The presence of the delivery prohibition tag on the fill pipe of an ineligible underground storage tank shall be sufficient notice to any person, including the owner, the operator, and product deliverers, that the underground storage tank is ineligible for delivery or deposit. The board may use other methods in addition to the delivery prohibition tag to provide notice to product deliverers.

H. An owner or operator shall notify the board in writing once an ineligible underground storage tank has been returned to compliance and provide a written report detailing all actions that have been taken to return the UST system to compliance, as well as supporting evidence such as test reports, invoices, receipts, inventory records, etc. As soon as practicable after confirming that the underground storage tank is in compliance with the requirements of this chapter or 9VAC25-590, or both, but in no event later than two business days, the board shall remove or authorize the owner or operator, in writing, to remove the delivery prohibition tag.

I. If the board determines that a violation exists that warrants the imposition of delivery prohibition, the board may further consider whether the threat posed by the violation is outweighed by the need for fuel from the underground storage tank(s) in question to meet an emergency situation or the need for availability of or access to motor fuel in any rural and remote area. If the board finds that such a condition outweighs the immediate risk of the violation, the board may defer imposition of delivery prohibition for up to 180 days. In every such case the director shall consider (i) issuing a special order under the authority of subdivision 10 of § 10.1-1186 of the Code of Virginia prescribing a prompt schedule for abating the violation and (ii) imposing a civil penalty.

J. The board may temporarily authorize an owner or operator to accept delivery into an ineligible underground storage tank(s) if such activity is necessary to test or calibrate the underground storage tank(s) or dispenser system.

K. Nothing in this section shall prevent the board or the director from exercising any other enforcement authority including, without limitation, their authority to issue emergency orders and their authority to seek injunctive relief.

VA.R. Doc. No. R07-749; Filed July 27, 2010, 11:12 a.m.

# TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

## 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: **10VAC5-120. Security Required of Money Order Sellers and Money Transmitters (adding 10VAC5-120-50).**

Statutory Authority: §§ 6.1-378.1 and 12.1-13 of the Code of Virginia.

Effective Date: July 27, 2010.

Agency Contact: Gerald Fallen, Deputy Commissioner, State Corporation Commission, Bureau of Financial Institutions, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9699, FAX (804) 371-9416, or email gerald.fallen@scc.virginia.gov.

Summary:

*The State Corporation Commission is adopting a regulation that establishes the schedule for the annual assessment to be paid by money order sellers and money transmitters licensed under Chapter 12 (§ 6.1-370 et seq.) of Title 6.1 of the Code of Virginia to defray the costs of their examination and supervision. Under the final regulation, licensees are required to pay an annual assessment of $0.000047 per dollar of money orders sold and money transmitted based on the dollar volume of business conducted by a licensee, either directly or through its authorized delegates, during the calendar year preceding the year of the assessment.*

AT RICHMOND, JULY 21, 2010

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2010-00144

Ex Parte: In re: annual assessment
of licensed money order sellers and
money transmitters

ORDER ADOPTING A REGULATION

On May 17, 2010, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal to adopt a regulation pursuant to § 6.1-373 B of the Code of Virginia. The proposed regulation, 10 VAC 5-120-50, prescribes an assessment schedule for money order sellers and money transmitters licensed under Chapter 12 of Title 6.1 of the Code of Virginia ("licensees") in order to defray the cost of their examination and supervision. The Order and proposed regulation were published in the Virginia Register of Regulations on June 7, 2010, posted on the Commission's website, and mailed to all licensees and other interested parties. Licensees and other interested parties were afforded the opportunity to file written comments or request a hearing on or before June 18, 2010.

Comments on the proposed regulation were filed by Mr. Randy Mersky on behalf of Global Express Money Orders, Inc.[1] In his comment letter, Mr. Mersky contended that the examination process has historically been more complicated, involved, and time consuming for money transmitters, and that the assessment rate for money orders should be much lower than the assessment rate for money transmission. Mr. Mersky also recommended that the assessment schedule take into account a licensee's overall size or net worth.[2] On June 22, 2010, the Commission entered an Order directing the Bureau of Financial Institutions ("Bureau") to file a written response to Mr. Mersky's comments.

On June 25, 2010, the Bureau filed a Response to Comments. The Bureau reported to the Commission that it had contacted regulators in several other states (California, Ohio, Texas, and Wyoming) that have substantial experience regulating and examining money order sellers and money transmitters, and that all of the state regulators uniformly indicated that (i) money order sellers must comply with the same laws as money transmitters, (ii) regulators use the same programs and procedures to examine both products, and (iii) the time allotted by regulators for examinations is identical. The Bureau also indicated that the complexity and length of a particular licensee's examination is already factored into the proposed assessment schedule, and that the overall size or net worth of a licensee is redundant and/or inapt as a proxy for the amount of regulatory resources that need to be devoted to an institution.

On July 8, 2010, the Bureau filed a Supplement to Response in which it requested leave to supplement its Response to Comments on the basis that it had inadvertently omitted certain germane information. Specifically, the states of Ohio, Texas, and Wyoming had all informed the Bureau that they apply the same assessment rate to money order sellers and money transmitters. The Bureau requested that this supplemental information be appended to its Response to Comments.

NOW THE COMMISSION, having considered the proposed regulation, the comments timely filed, the Bureau's Response to Comments, the record herein, and applicable law, finds that the Bureau's request for leave to supplement its Response to Comments should be granted, that a hearing is

unnecessary, and that the regulation should be adopted as proposed.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation, 10 VAC 5-120-50, attached hereto is adopted effective July 27, 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 by the Clerk of the Commission to: Randy Mersky, Global Express Money Orders, Inc., 8819 Monard Drive, Silver Spring, Maryland 20910; Ezra C. Levine, Howrey LLP, 1299 Pennsylvania Avenue, NW, Washington, DC 20004-2402; and to the Commissioner of Financial Institutions, who shall mail a copy of this Order and the attached regulation to all licensed money order sellers and money transmitters and such other interested parties as he may designate.

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[1] After the comment period deadline, a comment letter was filed by Mr. Ezra C. Levine on behalf of The Money Services Round Table. The Money Services Round Table requested that the proposed regulation be amended to include a cap of $100,000 per licensee.

[2] In his comments, Mr. Mersky also "suggested" that a hearing be held to discuss this matter further.

CHAPTER 120
~~SECURITY REQUIRED OF~~ MONEY ORDER SELLERS AND MONEY TRANSMITTERS

**10VAC5-120-50. Assessment schedule for the examination and supervision of money order sellers and money transmitters.**

Pursuant to subsection B of § 6.1-373 of the Code of Virginia, the commission sets the following schedule for the annual assessment to be paid by persons licensed under Chapter 12 (§ 6.1-370 et seq.) of Title 6.1 of the Code of Virginia. The assessment defrays the costs of the examination and supervision of licensees by the Bureau of Financial Institutions.

The annual assessment shall be $0.000047 per dollar of money orders sold and money transmitted by a licensee pursuant to Chapter 12 (§ 6.1-370 et seq.) of Title 6.1 of the Code of Virginia. The assessment shall be based on the dollar volume of business conducted by a licensee, either directly or through its authorized delegates, during the calendar year preceding the year of the assessment.

The amount calculated using the above schedule shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before August 1 for the current calendar year. The assessment shall be paid by licensees on or before September 1.

The annual report, due April 15 each year, of each licensee provides the basis for its assessment. In cases where a license has been granted between January 1 and April 15 of the year of the assessment, the licensee's initial annual assessment shall be $0.

Fees prescribed and assessed pursuant to this schedule are apart from, and do not include, the following: (i) the annual license renewal fee of $750 authorized by subsection A of § 6.1-373 of the Code of Virginia and (ii) the reimbursement for expenses authorized by subsection C of § 6.1-373 of the Code of Virginia.

VA.R. Doc. No. R10-2418; Filed July 21, 2010, 3:37 p.m.

## Proposed Regulation

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

Title of Regulation: **10VAC5-210. Motor Vehicle Title Lending (adding 10VAC5-210-10 through 10VAC5-210-110).**

Statutory Authority: § 6.2-2214 (effective October 1, 2010) and 12.1-13 of the Code of Virginia.

Public Hearing Information:

September 7, 2010 - 2 p.m. - State Corporation Commission, Courtroom, Tyler Building, 1300 East Main Street, 2nd Floor, Richmond, VA

Public Comment Deadline: August 30, 2010.

Agency Contact: Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9701, FAX (804) 371-9416, or email susan.hancock@scc.virginia.gov.

Summary:

*The State Corporation Commission is proposing regulations in connection with Chapter 477 of the 2010 Acts of Assembly, which, effective October 1, 2010, establishes a comprehensive licensing and regulatory framework for motor vehicle title lenders and motor vehicle title loans. The proposed regulations (i) define various terms used in Chapter 477, including "duplicate original" and "good funds instrument"; (ii) require a*

*licensee to file written reports with the Commissioner of Financial Institutions within 15 days following the occurrence of certain events (including those events set forth in Chapter 477); (iii) require a licensee to provide prospective borrowers with a warning notice; (iv) prescribe the contents of the rights and responsibilities pamphlet; (v) require a licensee to post in or on its licensed locations the days and hours during which it is open for business so that the posting is legible from outside; (vi) prohibit a licensee from making a motor vehicle title loan to a borrower on the same day that the borrower repaid or satisfied in full a motor vehicle title loan from the same licensee or another licensee; (vii) require a licensee to include various questions in its loan application form so that the licensee will know whether an applicant is ineligible for a motor vehicle title loan; (viii) provide that a licensee must release its security interest and take other specified actions within 10 days after the date that a borrower's obligations under a motor vehicle title loan are satisfied in full; (ix) require a licensee to provide certain data to the Commissioner of Financial Institutions when filing its annual report, such as the total number and dollar amount of motor vehicle title loans made by the licensee; (x) set forth the rules governing the conduct of other business in motor vehicle title lending offices, including the findings that the commission would need to make before approving an application to conduct other business in a licensee's motor vehicle title lending offices, the uniform conditions applicable to the conduct of any approved other business as well as the conditions attached to specific types of other businesses, such as making payday loans, acting as an agent of a money transmitter, and providing tax preparation services; (xi) require a licensed motor vehicle title lender to disclose certain information in its advertisements, including the name of the lender as set forth in the license issued by the commission and a statement that the lender is "licensed by the Virginia State Corporation Commission"; (xii) require a licensee to maintain certain records for at least three years after final payment is made on a motor vehicle title loan, including copies of the loan application, the loan agreement, and a record of the fair market value of the motor vehicle securing the loan; (xiii) require a licensee to maintain a repossession log or similar record of all motor vehicles that have been repossessed by or on behalf of the licensee; (xiv) require a licensee to maintain certain other records for at least three years after a motor vehicle used to secure a loan is repossessed and sold by or on behalf of the licensee, including copies of the written notices and accounting that were mailed by the licensee to the borrower prior to the sale of the motor vehicle; (xv) clarify the commission's enforcement authority and provide that the commission may, at its discretion, waive or grant exceptions to any provision of its motor vehicle title lending regulations for good cause shown; and (xiv) set forth various other requirements and limitations.*

*In addition, the proposed regulations reflect statutory citations to Title 6.2 in conformance with Chapter 794 of the 2010 Acts of Assembly, which recodifies Title 6.1 of the Code of Virginia as Title 6.2.*

AT RICHMOND, JULY 22, 2010

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2010-00165

Ex Parte: In re: motor vehicle
title lending regulations

ORDER TO TAKE NOTICE

Chapter 477 of the 2010 Virginia Acts of Assembly amends the Code of Virginia by adding Chapter 21 of Title 6.1 of the Code of Virginia ("Chapter 21"), which establishes a comprehensive licensing and regulatory framework for motor vehicle title lenders and motor vehicle title loans. Chapter 21 will become effective on October 1, 2010. Section 6.1-494 of Chapter 21 authorizes the State Corporation Commission ("Commission") to adopt regulations that it deems appropriate to effect the purposes of such chapter.

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed regulations that define various terms used in Chapter 21, clarify and implement certain requirements, limitations, and prohibitions applicable to motor vehicle title lenders and motor vehicle title loans, and prescribe the contents of the pamphlet that licensees must furnish to prospective borrowers. Since the final regulations will be made effective on or after the date that Title 6.1 of the Code of Virginia is replaced by Title 6.2 of the Code of Virginia,[1] all of the affected statutory citations that appear in the proposed regulations reference Title 6.2 rather than Title 6.1.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with an effective date of October 1, 2010.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, entitled "Motor Vehicle Title Lending," are appended hereto and made a part of the record herein.

(2) Comments on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before August 30, 2010. All correspondence shall contain a reference to Case No. BFI-2010-00165. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(3) The Commission shall conduct a hearing in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, at 2:00 p.m. on September 7, 2010, to consider the adoption of the proposed regulations.

(4) This Order and the attached proposed regulations shall be posted on the Commission's website at http://www.scc.virginia.gov/case.

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

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order, including a copy of the proposed regulations, to any interested parties that he may designate.

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[1] Chapter 794 of the 2010 Virginia Acts of Assembly recodifies Title 6.1 of the Code of Virginia as Title 6.2 of the Code of Virginia effective October 1, 2010. Chapter 21 of Title 6.1 will become Chapter 22 of Title 6.2.

## CHAPTER 210
## MOTOR VEHICLE TITLE LENDING

**10VAC5-210-10. Definitions.**

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

"Act" means Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

"Advertisement" for purposes of the Act and this chapter means a commercial message in any medium that promotes, directly or indirectly, a motor vehicle title loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc.

"Bureau" means the Bureau of Financial Institutions.

"Business day" for purposes of the Act and this chapter means a day on which the licensee's office is open for business as posted as required by subsection B of 10VAC5-210-50.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of Financial Institutions.

"Duplicate original" for purposes of the Act and this chapter means an exact copy of a signed original, an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of the Act and this chapter means a certified check, cashier's check, money order or, if the licensee is equipped to handle such payments, payment effected by use of a credit card.

"Liquid assets" for purposes of the Act and this chapter means cash in depository institutions, money market funds, commercial paper, and treasury bills.

B. Other terms used in this chapter shall have the meaning set forth in § 6.2-2200 of the Act.

**10VAC5-210-20. Requirements for licensees; reporting requirements; acquisitions.**

A. A licensee shall maintain in its own name unencumbered liquid assets per place of business in Virginia of at least $75,000 at all times.

1. The minimum liquid assets required to be maintained pursuant to this subsection shall be separate and apart from, and in addition to, any minimum liquid assets that the licensee is required to maintain in connection with any other business conducted in the same office.

2. A licensee shall upon request by the bureau submit proof that it is complying with the provisions of this subsection.

B. After receiving its license from the commission, a licensee shall give written notice to the bureau of its commencement of business within 10 days thereafter.

C. Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact, if any, on the activities of the licensee in Virginia:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.

2. The Attorney General or any other governmental authority institutes an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia).

3. Any governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.

4. Any governmental authority (i) revokes or suspends the licensee's motor vehicle title lender license, title pawn license, or similar license; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its motor vehicle title lending, title pawn, or similar business; or (iii) takes any other action against the licensee relating to its motor vehicle title lending, title pawn, or similar business where the total amount of restitution or other payment from the licensee exceeds $20,000. A licensee shall not be required to provide the commissioner with information about such event to the

extent that such disclosure is prohibited by the laws of another state.

5. Based on allegations by any governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed motor vehicle title lending, title pawn, or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

6. The licensee surrenders its license to engage in motor vehicle title lending, title pawn, or similar business in another state in lieu of threatened or pending license revocation, license suspension, or other administrative, regulatory, or enforcement action.

7. The licensee is denied a license to engage in motor vehicle title lending, title pawn, or similar business in another state.

8. The licensee or any of its members, partners, directors, officers, principals, or employees is indicted or convicted of a felony.

D. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under the Act shall pay a nonrefundable application fee of $500.

E. If a person has filed a bond with the bureau, as required by § 6.2-2204 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or

2. The person ceases making motor vehicle title loans.

F. Within 30 days after a person's license is surrendered or revoked, the former licensee shall provide the bureau with (i) the name, address, and telephone number of a designated contact person; (ii) the location of the former licensee's motor vehicle title loan records; and (iii) any additional information that the bureau may reasonably require.

G. A person shall remain subject to the provisions of the Act and this chapter applicable to licensees in connection with all motor vehicle title loans that the person made while licensed as a motor vehicle title lender notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or

2. The person ceases making motor vehicle title loans.

**10VAC5-210-30. Notice and pamphlet.**

A. Prior to furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification, a licensee shall provide the prospective borrower with (i) a written notice that complies with subsection B of this section; and (ii) a borrower rights and responsibilities pamphlet that complies with subsections C and D of this section.

B. 1. The required text of the written notice shall be as follows: "WARNING: A motor vehicle title loan is not intended to meet your long-term financial needs. The interest rate on a motor vehicle title loan is high and you are pledging your motor vehicle as collateral for the loan. If you fail to repay your loan in accordance with your loan agreement, we may repossess and sell your motor vehicle. You should consider whether there are other lower cost loans available to you. If you obtain a motor vehicle title loan, you should request the minimum loan amount required to meet your immediate needs." A licensee shall not modify or supplement the required text of the written notice.

2. The written notice shall be printed on a single 8-1/2 x 11 sheet of paper and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The notice shall be printed in at least 24-point bold type and contain an acknowledgment that is signed and dated by each prospective borrower. The acknowledgement shall state the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities."

3. A duplicate original of the acknowledged notice shall be kept by a licensee in the separate file maintained with respect to the loan for the period specified in § 6.2-2209 of the Code of Virginia.

C. The borrower rights and responsibilities pamphlet shall be printed in at least 12-point type and be separate from all other papers, documents, or notices obtained or furnished by the licensee. The pamphlet shall contain the exact language prescribed in subsection D of this section. A licensee shall not modify or supplement the required text of the pamphlet. The title of the pamphlet ("Motor Vehicle Title Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities") and the headings for the individual sections of the pamphlet (e.g., "In General," "Notice from Lender," etc.) shall be printed in bold type.

D. The required text of the borrower rights and responsibilities pamphlet shall be as follows:

**MOTOR VEHICLE TITLE LENDING IN THE COMMONWEALTH OF VIRGINIA**

**BORROWER RIGHTS AND RESPONSIBILITIES**

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your rights and responsibilities in connection with obtaining a motor vehicle title loan in Virginia under Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia.

If you have any questions about motor vehicle title lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or on the Internet at http://www.scc.virginia.gov/bfi.

**In General**: You are responsible for evaluating whether a motor vehicle title loan is right for you. Alternatives may include among other things less expensive short-term financing from another financial institution, family, or friends, a cash advance on a credit card, or an account with overdraft protection.

**Notice from Lender**: A motor vehicle title lender is required to provide you with a clear and conspicuous printed notice advising you that a motor vehicle title loan is not intended to meet your long-term financial needs; that the interest rate on a motor vehicle title loan is high; and that if you fail to repay your loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle.

**Prohibition on Obtaining Loan if Motor Vehicle has Existing Lien / One Loan at a Time**: Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you if (i) your certificate of title indicates that your motor vehicle is security for another loan or has an existing lien; or (ii) you currently have another motor vehicle title loan from either the same motor vehicle title lender or any other motor vehicle title lender conducting motor vehicle title lending business in Virginia.

**Prohibition on Obtaining Loan on Same Day Another Loan was Repaid**: Virginia law prohibits a motor vehicle title lender from making a motor vehicle title loan to you on the same day that you repaid or satisfied in full a motor vehicle title loan from either the same motor vehicle title lender or any other motor vehicle title lender conducting motor vehicle title lending business in Virginia.

**Prohibition on Loans to Covered Members of the Armed Forces and their Dependents**: Virginia law prohibits a motor vehicle title lender from making motor vehicle title loans to covered members of the armed forces and their dependents. If you are (i) on active duty under a call or order that does not specify a period of 30 days or less; or (ii) on active guard and reserve duty, then you are a covered member of the armed forces and a motor vehicle title lender is prohibited from making a motor vehicle title loan to you. A motor vehicle title lender is also prohibited from making a motor vehicle title loan to you if (i) you are married to a covered member of the armed forces; (ii) you are the child, as defined in 38 USC § 101(4), of a covered member of the armed forces; or (iii) more than one-half of your support during the past 180 days was provided by a covered member of the armed forces.

**Certificate of Title / Other Security Interests**: Prior to obtaining a motor vehicle title loan, you will be required to give a motor vehicle title lender the certificate of title for your motor vehicle. The motor vehicle title lender is required to record its lien with the Virginia Department of Motor Vehicles and hold the certificate of title until your loan is repaid or satisfied in full. The motor vehicle title lender cannot take an interest in more than one motor vehicle as security for a motor vehicle title loan. Apart from your motor vehicle and any accessories that are attached to it, the motor vehicle title lender cannot take an interest in any other property you own as security for a motor vehicle title loan.

**Maximum Loan Amount**: A motor vehicle title lender cannot loan you more than 50% of the fair market value of your motor vehicle. The fair market value is generally based on the loan value for your motor vehicle according to a recognized pricing guide.

**Minimum and Maximum Loan Term / Monthly Payments**: Under Virginia law, your loan term cannot be either less than 120 days or more than 12 months. Your motor vehicle title loan will be repayable in substantially equal monthly installments of principal and interest. However, if you have a longer first payment period, your first monthly payment may be larger than your remaining monthly payments.

**Interest and Other Loan Costs**: The following are the maximum interest rates that a motor vehicle title lender is permitted to charge you PER MONTH on the principal amount of your loan that remains outstanding: (i) 22% per month on the portion of the outstanding balance up to and including $700; (ii) 18% per month on the portion of the outstanding balance between $701 and $1,400; and (iii) 15% per month on the portion of the outstanding balance of $1,401 and higher. As long as these maximum rates are not exceeded, a motor vehicle title lender is allowed to accrue interest using a single blended interest rate if the outstanding balance is higher than $700. In addition to interest, a motor vehicle title lender may charge you for the actual cost of recording its lien with the Virginia Department of Motor Vehicles.

If you make a payment more than seven calendar days after its due date, a motor vehicle title lender may impose a late charge of up to five percent of the amount of the payment.

A motor vehicle title lender is prohibited from accruing or charging you interest on or after (i) the date the motor vehicle title lender repossesses your motor vehicle; or (ii) 60 days after you fail to make a monthly payment on your loan, unless you are hiding your motor vehicle.

Other than interest and the costs specifically mentioned in this section and the section below ("Costs of Repossession and Sale"), no additional amounts may be directly or indirectly charged, contracted for, collected, received, or recovered by a motor vehicle title lender.

**Costs of Repossession and Sale**: A motor vehicle title lender may charge you for any reasonable costs that it incurs in repossessing, preparing for sale, and selling your motor vehicle if (i) you default on your motor vehicle title loan; (ii) the motor vehicle title lender sends you a written notice at least 10 days prior to repossession advising you that your motor vehicle title loan is in default and that your motor vehicle may be repossessed unless you pay the outstanding principal and interest; and (iii) you fail to pay the amount owed prior to the date of repossession. A motor vehicle title lender is prohibited from charging you for any storage costs if the motor vehicle title lender takes possession of your motor vehicle.

**Written Loan Agreement**: A motor vehicle title lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the motor vehicle title lender. Your motor vehicle title loan agreement is a binding, legal document that requires you to repay your loan. Make sure you read the entire loan agreement carefully before signing and dating it. A motor vehicle title lender must provide you with a duplicate original of your loan agreement at the time you sign it. If any provision of your loan agreement violates Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia, the provision will not be enforceable against you.

**Property Insurance**: A motor vehicle title lender may require you to purchase or maintain property insurance for your motor vehicle. However, a motor vehicle title lender cannot require you to purchase or maintain property insurance from or through a particular provider or list of providers.

**Prohibition on Obtaining Funds Electronically**: A motor vehicle title lender is prohibited from electronically debiting your deposit account or obtaining any of your funds by electronic means.

**Loan Proceeds**: You will receive your loan proceeds in the form of (i) cash; (ii) a check from the motor vehicle title lender; or (iii) a debit card. If you receive a check, the motor vehicle title lender is prohibited from charging you a fee for cashing the check. Similarly, a check casher located in the same office is prohibited from charging you a fee for cashing the motor vehicle title lender's check. If you receive a debit card, the motor vehicle title lender is prohibited from charging you an additional fee when you withdraw or use the loan proceeds.

**Other Businesses**: A motor vehicle title lender is prohibited from engaging in any other businesses in its motor vehicle title loan offices unless permitted by order of the State Corporation Commission. A motor vehicle title lender is also prohibited by statute from selling you any type of insurance coverage.

**Using Motor Vehicle Title Loan to Purchase Products or Services or Repay Other Loans**: A motor vehicle title lender is prohibited from making you a motor vehicle title loan so that you can purchase another product or service sold at the motor vehicle title lender's business location. A motor vehicle title lender is also prohibited from making you a motor vehicle title loan so that you can repay another loan you may have from either the motor vehicle title lender or an affiliate of the motor vehicle title lender.

**Right to Cancel**: You have the right to cancel your motor vehicle title loan at any time prior to the close of business on the next day the motor vehicle title lender is open following the date your loan is made by either returning the original loan proceeds check or paying the motor vehicle title lender the amount advanced to you in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle such payments, by using a credit card. If you cancel your motor vehicle title loan, the motor vehicle title lender must mark your original loan agreement with the word "canceled" and return it to you along with your certificate of title.

**Cash Payments / Partial Payments / Prepayments**: You have the right to receive a signed, dated receipt for each cash payment made in person, which will show the balance remaining on your motor vehicle title loan.

Additionally, you have the right to make a partial payment on your motor vehicle title loan at any time prior to its specified due date without penalty. However, a motor vehicle title lender may apply a partial payment first to any amounts that are due and unpaid at the time of such payment. If your motor vehicle title loan is current, a partial payment will reduce your outstanding balance as well as the total amount of interest that you will be required to pay.

You also have the right to prepay your motor vehicle title loan in full before its specified maturity date without penalty by paying the motor vehicle title lender the total outstanding balance on your loan, including any accrued and unpaid interest and other charges that you may owe on your motor vehicle title loan.

**Lender to Return Original Loan Agreement and Certificate of Title**: Within 10 days after the date that you repay your motor vehicle title loan in full, the motor vehicle title lender must (i) mark your original loan agreement with the word "paid" or "canceled" and return it to you; (ii) take

any action necessary to reflect the termination of its lien on your motor vehicle's certificate of title; and (iii) return the certificate of title to you. If you have any questions or concerns regarding your certificate of title, you should contact the Virginia Department of Motor Vehicles.

**No Rollovers, Extensions, Etc.**: A motor vehicle title lender cannot refinance, renew, extend, or rollover your motor vehicle title loan.

**Failure to Repay**: Pay back your motor vehicle title loan! Know when your payments are due and be sure to repay your motor vehicle title loan on time and in full. IF YOU DO NOT REPAY YOUR MOTOR VEHICLE TITLE LOAN IN ACCORDANCE WITH YOUR LOAN AGREEMENT, THE MOTOR VEHICLE TITLE LENDER MAY REPOSSESS AND SELL YOUR MOTOR VEHICLE (see section below on "Repossession and Sale of your Motor Vehicle").

In general, a motor vehicle title lender cannot seek a personal money judgment against you if you fail to pay any amount owed in accordance with your loan agreement. However, a motor vehicle title lender may seek a personal money judgment against you if you impair the motor vehicle title lender's security interest by (i) intentionally damaging or destroying your motor vehicle; (ii) intentionally hiding your motor vehicle; (iii) giving the motor vehicle title lender a lien on a motor vehicle that has an undisclosed prior lien; (iv) selling your motor vehicle without the motor vehicle title lender's written consent; or (v) securing another loan or obligation with a security interest in your motor vehicle without the motor vehicle title lender's written consent.

In collecting or attempting to collect a motor vehicle title loan, a motor vehicle title lender is required to comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act, 15 USC § 1692 et seq., regarding harassment or abuse; false, misleading or deceptive statements or representations; and unfair practices in collections. A motor vehicle title lender is also prohibited from threatening or beginning criminal proceedings against you if you fail to pay any amount owed in accordance with your loan agreement.

**Repossession and Sale of your Motor Vehicle**: If you do not repay your motor vehicle title loan in accordance with your loan agreement, the motor vehicle title lender may repossess and sell your motor vehicle in order to recover any outstanding amounts that you owe.

If a motor vehicle title lender repossesses your motor vehicle, the motor vehicle title lender must send you a written notice at least 15 days prior to the sale of your motor vehicle. The notice will contain (i) the date and time after which your motor vehicle may be sold; and (ii) a written accounting of the outstanding balance on your motor vehicle title loan, the amount of interest accrued through the date the motor vehicle title lender took possession of your motor vehicle, and any reasonable costs incurred to date by the motor vehicle title lender in connection with repossessing, preparing for sale, and selling your motor vehicle. At any time prior to the sale of your motor vehicle, you may obtain your motor vehicle by paying the motor vehicle title lender the total amount specified in the notice. Payment must be made in cash or by certified check, cashier's check, money order or, if the motor vehicle title lender is equipped to handle such payments, by using a credit card.

Within 30 days of a motor vehicle title lender receiving funds from the sale of your motor vehicle, you are entitled to receive any surplus from the sale in excess of the sum of the following: (i) the outstanding balance on your motor vehicle title loan; (ii) the amount of interest accrued on your motor vehicle title loan through the date the motor vehicle title lender repossessed your motor vehicle; and (iii) any reasonable costs incurred by the motor vehicle title lender in repossessing, preparing for sale, and selling your motor vehicle.

See section above on "Costs of Repossession and Sale" for additional information regarding the conditions that must be met in order for a motor vehicle title lender to collect the reasonable costs of repossessing, preparing for sale, and selling your motor vehicle.

**Violation of the Virginia Consumer Protection Act**: Losses suffered as the result of a motor vehicle title lender's violation of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2 of the Code of Virginia may be pursued under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia), which in some cases permits consumers to recover actual and punitive damages.

**Complaints and Contacting the Bureau of Financial Institutions**: For assistance with any complaints you may have against a motor vehicle title lender, please contact the Bureau of Financial Institutions toll-free at (800) 552-7945 or on the Internet at http://www.scc.virginia.gov/bfi. Complaints must be filed in writing with the Bureau of Financial Institutions. Complaints should be mailed to the Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to the Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416.

**10VAC5-210-40. Posting of charges and contact information for complaints.**

Licensees shall conspicuously post the schedule of finance charges and notice required by subdivision 14 of § 6.2-2215 of the Code of Virginia in accordance with the provisions of this section.

A. The minimum size for the poster shall be 24 inches by 18 inches.

B. The title for the schedule of finance charges, which shall be printed in at least 48-point bold type, shall be

"SCHEDULE OF FINANCE CHARGES FOR MOTOR VEHICLE TITLE LOANS." The title for the notice, which shall also be printed in at least 48-point bold type, shall be "HOW TO FILE A COMPLAINT AGAINST US."

C. The schedule of finance charges and notice shall be printed in at least 24-point bold type.

D. The notice shall contain the following statement: "Should you wish to file a complaint against us, you may contact the Bureau of Financial Institutions at (800) 552-7945 or on the Internet at http://www.scc.virginia.gov/bfi. Complaints must be filed in writing with the Bureau of Financial Institutions. Complaints should be mailed to the Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to the Bureau of Financial Institutions, Attn: Complaints, at (804) 371-9416."

**10VAC5-210-50. Additional business requirements and restrictions.**

A. Each original license shall be prominently posted in each place of business of the licensee.

B. A licensee shall post in or on its licensed locations the days and hours during which it is open for business so that the posting is legible from outside.

C. A licensee shall endeavor to provide the loan documents, printed notice, and pamphlet required by 10VAC5-210-30, in a language other than English when a prospective borrower is unable to read the materials printed in English.

D. A licensee shall not knowingly make a motor vehicle title loan to (i) a person who has an outstanding motor vehicle title loan from the same licensee or another licensee; (ii) a covered member of the armed forces; or (iii) a dependent of a covered member of the armed forces. To enable a licensee to make these determinations and the determination in subsection F of this section, a licensee shall clearly and conspicuously include the following questions in its written loan application, which the licensee shall require each applicant to answer before obtaining a motor vehicle title loan. A licensee shall not make a motor vehicle title loan to an applicant unless the applicant answers "no" to all of these questions:

1. Do you currently have a motor vehicle title loan from any motor vehicle title lender?

2. At any time today, did you repay or satisfy in full a motor vehicle title loan from any motor vehicle title lender?

3. Are you (i) on active duty under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

4. Are you married to an individual who is either (i) on active duty under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

5. Are you the child, as defined in 38 USC § 101(4), of an individual who is either (i) on active duty under a call or order that does not specify a period of 30 days or less, or (ii) on active guard and reserve duty?

6. Was more than one-half of your support during the past 180 days provided by an individual who is either (i) on active duty under a call or order that does not specify a period of 30 days or less or (ii) on active guard and reserve duty?

E. A licensee shall not require a borrower to purchase or maintain property insurance for a motor vehicle from or through a particular provider or list of providers.

F. A licensee shall not make a motor vehicle title loan to a borrower on the same day that the borrower repaid or satisfied in full a motor vehicle title loan from the same licensee or another licensee. Any motor vehicle title loan made in violation of this subsection shall for purposes of subdivision 17 of § 6.2-2215 of the Code of Virginia be deemed an evasion of the prohibition on refinancing a motor vehicle title loan agreement set forth in § 6.2-2216 F of the Code of Virginia.

G. The maturity date of a motor vehicle title loan shall not be earlier than 120 days from the date a motor vehicle title loan agreement is executed by a borrower or later than 12 months from the date a motor vehicle title loan agreement is executed by a borrower.

H. A licensee shall not electronically debit a borrower's deposit account or otherwise obtain any funds from a borrower by electronic means, including the use of the Automated Clearing House network, electronic funds transfers, electronic check conversions, or re-presented check entries.

I. If a licensee disburses loan proceeds by means of a check, the licensee shall not (i) charge the borrower a fee for cashing the check or (ii) permit either a check casher located in the same office or any affiliated check casher to charge the borrower a fee for cashing the check.

J. A borrower shall have the right to cancel a motor vehicle title loan agreement at any time before the close of business on the next business day following the date that the loan agreement is executed by the borrower by returning the original loan proceeds check or paying to the licensee, in the form of cash or good funds instrument, the principal amount advanced to the borrower. If a borrower cancels a loan agreement in accordance with this subsection, the licensee shall upon receipt of the loan proceeds check, cash, or good funds instrument (i) mark the original loan agreement with the word "canceled," return it to the borrower, and retain a copy in its records; and (ii) return the certificate of title to the borrower. Furthermore, the licensee shall not be entitled to charge, contract for, collect, receive, recover, or require a

borrower to pay any interest, fees, or other amounts otherwise permitted by § 6.2-2216 of the Code of Virginia.

K. A licensee shall give a borrower a signed, dated receipt for each cash payment made in person, which shall state the balance due on the loan.

L. A borrower shall be permitted to prepay a motor vehicle title loan either in whole or in part without charge. Partial prepayments shall reduce the outstanding loan balance upon which interest is calculated. A licensee may apply a payment first to any amounts that are due and unpaid at the time of such payment.

M. Pursuant to §§ 6.2-2215 and 46.2-643 of the Code of Virginia, a licensee shall release its security interest and perform the following acts within 10 days after the date that a borrower's obligations under a motor vehicle title loan agreement are satisfied in full: (i) mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records; (ii) take any action necessary to reflect the termination of its lien on the motor vehicle's certificate of title; and (iii) return the certificate of title to the borrower.

N. When sending the written notices and accounting specified by § 6.2-2217 of the Code of Virginia, a licensee shall obtain proof of mailing from the United States Postal Service or other common carrier.

O. A licensee may impose a late charge for failure to make timely payment of any amount due under a motor vehicle title loan agreement provided that (i) the late charge is specified in the loan agreement and (ii) the amount of the late charge does not exceed 5.0% of the amount of the payment. A payment shall be considered to be timely if it is made no later than seven calendar days after the due date specified in the loan agreement.

P. Nothing in the Act or this chapter shall be construed to prohibit a licensee from (i) voluntarily accepting a payment on an outstanding motor vehicle title loan from a borrower after the date that such payment was due to the licensee or (ii) considering a payment to be timely if it is made more than seven calendar days after its due date. However, except as otherwise permitted by the Act and this chapter, the licensee shall not charge, contract for, collect, receive, recover, or require a borrower to pay any additional interest, fees, or other amounts.

**10VAC5-210-60. Annual reporting requirements.**

When making the annual report required by § 6.2-2210 of the Code of Virginia, in addition to other information required by the commissioner, a licensee shall provide the following data regarding motor vehicle title loans made to Virginia residents:

1. The total number and dollar amount of motor vehicle title loans made by the licensee.

2. The total number of individual borrowers to whom motor vehicle title loans were made by the licensee.

3. The minimum, maximum, and average loan amount of motor vehicle title loans made by the licensee.

4. The minimum, maximum, and average Annual Percentage Rate of motor vehicle title loans made by the licensee.

5. The minimum, maximum, and average term (in days) of motor vehicle title loans made by the licensee.

6. The total number of individual borrowers that failed to make a monthly payment on a motor vehicle title loan for at least 60 days.

7. The total number of motor vehicles that were repossessed by or on behalf of the licensee.

8. The total number of repossessed motor vehicles that were sold by or on behalf of the licensee.

9. The total number of personal money judgments against borrowers that were obtained by or on behalf of the licensee.

**10VAC5-210-70. Other business in motor vehicle title lending offices.**

A. This section governs the conduct of any business other than motor vehicle title lending where a licensed motor vehicle title lending business is conducted. As used in this section, the term "other business operator" refers to a licensed motor vehicle title lender or third party, including an affiliate of the licensed motor vehicle title lender, who conducts or wants to conduct other business from one or more motor vehicle title lending offices.

1. Pursuant to subdivision 18 of § 6.2-2215 of the Code of Virginia, a licensee shall not conduct the business of making motor vehicle title loans at any office, suite, room, or place of business where any other business is solicited or conducted, except a registered check cashing business or such other business as the commission determines should be permitted, and subject to such conditions as the commission deems necessary and in the public interest.

2. No person shall engage in the business of selling insurance or enrolling borrowers under group insurance policies from any office, suite, room, or place of business where a licensed motor vehicle title lending business is conducted.

3. Pursuant to § 6.2-2107 of the Code of Virginia, no person registered or required to be registered as a check casher under Chapter 21 (§ 6.2-2100 et seq.) of Title 6.2 of the Code of Virginia shall make loans from any location, including an office, suite, room, or place of business where a licensed motor vehicle title lending business is conducted, unless the person is licensed under Chapter 18

(§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia and the loans are made in accordance with Chapter 18 of Title 6.2 of the Code of Virginia. Accordingly, a person registered or required to be registered as a check casher shall not make motor vehicle title loans.

B. Upon the filing of a written application, provision of any information relating to the application as the commissioner may require, and payment of the fee required by law, other business may be conducted in a location where a licensed motor vehicle title lending business is conducted if the commission finds that (i) the proposed other business is financial in nature; (ii) the proposed other business is in the public interest; (iii) the other business operator has the general fitness to warrant belief that the business will be operated in accordance with law; and (iv) the applicant has been operating its motor vehicle title lending business in accordance with the Act and this chapter. The commission shall in its discretion determine whether a proposed other business is "financial in nature," and shall not be obliged to consider the meaning of this term under federal law. A business is financial in nature if it primarily deals with the offering of debt, money or credit, or services directly related thereto.

C. Written evidence of commission approval of each other business conducted by an other business operator should be maintained at each location where such other business is conducted.

D. All approved other businesses in motor vehicle title lending offices shall be conducted in accordance with the following conditions:

1. The licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold or (ii) loans offered, facilitated, or made, by the other business operator at the licensee's motor vehicle title lending offices.

2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.

3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business or (ii) the extent to which it is subject to supervision or regulation.

4. The licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from or (ii) obtain a loan from or through the other business operator. The other business operator shall not (a) sell its goods or services; (b) offer, facilitate, or make loans; or (c) vary the terms of its goods, services, or loans on the condition or requirement that a person also obtain a motor vehicle title loan from the licensee.

5. The other business operator shall maintain books and records for its other business separate and apart from the licensee's motor vehicle title lending business and in a different location within the licensee's motor vehicle title lending offices. The bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.

E. If a licensee receives commission authority for an other business operator to conduct a payday lending business from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a payday loan from the other business operator.

2. The other business operator shall not make a payday loan to a person if (i) the person has an outstanding motor vehicle title loan from the licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the licensee.

3. The other business operator and the licensee shall not make a payday loan and a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.

4. The licensee and other business operator shall provide each applicant for a motor vehicle title loan or payday loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product.

F. If a licensee receives commission authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the licensee's motor vehicle title lending offices, the other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order

seller or money transmitter with whom it has a written agreement.

G. If a licensee receives commission authority for an other business operator to conduct the business of (i) tax preparation and electronic tax filing services or (ii) facilitating third party tax preparation and electronic tax filing services from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make, arrange, or broker a motor vehicle title loan that is secured by (i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.

2. The other business operator shall not engage in the business of (i) accepting funds for transmission to the Internal Revenue Service or other government instrumentalities or (ii) receiving tax refunds for delivery to individuals unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

H. If a licensee receives commission authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the licensee as a result of a motor vehicle title loan transaction.

2. The other business operator and the licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.

3. The licensee shall not make, arrange, or broker a motor vehicle title loan that is secured by (i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.

4. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia.

5. The licensee and other business operator shall provide each applicant for a motor vehicle title loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product.

I. If a licensee receives commission authority for an other business operator to conduct a consumer finance business from the licensee's motor vehicle title lending offices, the following additional conditions shall be applicable:

1. The licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding consumer finance loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the other business operator.

2. The other business operator shall not make a consumer finance loan to a person if (i) the person has an outstanding motor vehicle title loan from the licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the licensee.

3. The licensee and other business operator shall not make a motor vehicle title loan and a consumer finance loan contemporaneously or in response to a single request for a loan or credit.

4. The licensee and other business operator shall provide each applicant for a motor vehicle title loan or consumer finance loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product.

J. If a licensee receives commission authority for an other business operator to conduct the business of operating an automated teller machine from the licensee's motor vehicle title lending offices, the other business operator shall not charge a fee or receive other compensation in connection with the use of its automated teller machine by a person when the person is withdrawing funds in order to make a payment on a motor vehicle title loan from the licensee.

K. The commission may impose any additional conditions upon the conduct of other business in motor vehicle title lending offices that it deems necessary and in the public interest.

L. Failure by a licensee or other business operator to comply with any provision of this section or any condition imposed by the commission, or failure by a licensee to comply with the Act, this chapter, or any other law or regulation applicable to the conduct of the licensee's business, may result in revocation of the authority to conduct other business or any form of enforcement action specified in 10VAC5-210-100.

**10VAC5-210-80. Advertising.**

A. A licensee shall disclose the following information in its advertisements:

1. The name of the motor vehicle title lender as set forth in the license issued by the commission.

2. A statement that the motor vehicle title lender is "licensed by the Virginia State Corporation Commission."

3. The license number assigned by the commission to the motor vehicle title lender (i.e., VTL-XXX).

B. The information required by subsection A of this section shall be disclosed in accordance with the disclosure standards prescribed in § 6.2-2218 B of the Code of Virginia.

**10VAC5-210-90. Books, accounts, and records; responding to requests from the bureau.**

A. A licensee shall maintain in its licensed offices such books, accounts, and records as the bureau may reasonably require in order to determine whether the licensee is complying with the Act and this chapter. Such books, accounts, and records shall be maintained apart and separate from those relating to any other business in which the licensee is involved.

B. In addition to any other books, accounts, and records as the bureau may reasonably require, a licensee shall maintain copies of the following records for at least three years after final payment is made on any motor vehicle title loan:

1. The loan application.

2. The motor vehicle title loan agreement. If a loan has been repaid or satisfied in full, a licensee shall maintain a copy of the motor vehicle title loan agreement with the word "paid" or "canceled" along with documentation showing that the licensee released its security interest in the borrower's motor vehicle.

3. A record of the fair market value of the motor vehicle securing the loan along with supporting documentation from a recognized pricing guide. Supporting documentation shall include any factors used to determine the value of the motor vehicle, including the motor vehicle's condition, features, mileage, as well as the name of the pricing guide that the licensee relied upon in making the loan.

4. Any disclosures that were given to a borrower pursuant to the Truth in Lending Act (15 USC § 1601 et seq.) or any other federal or state laws.

5. The certificate of title for the motor vehicle, which shall reflect the licensee's security interest unless the borrower canceled or fully satisfied the motor vehicle title loan prior to the licensee recording its security interest with the Virginia Department of Motor Vehicles.

C. A licensee shall maintain a repossession log or similar record of all motor vehicles that have been repossessed by or on behalf of the licensee, including motor vehicles that are voluntarily surrendered by borrowers. The log or record shall include the following information: (i) the borrower's first and last name; (ii) the make, model, year, and vehicle identification number of the motor vehicle; (iii) the date the motor vehicle was repossessed; (iv) the date the motor vehicle was sold; (v) the name of the purchaser; and (vi) the sale price of the motor vehicle. Furthermore, in addition to any other books, accounts, and records as the bureau may reasonable require, a licensee shall maintain copies of the following records for at least three years after a motor vehicle used to secure a loan is repossessed and sold by or on behalf of the licensee:

1. The written notices and accounting sent by the licensee to a borrower pursuant to § 6.2-2217 of the Code of Virginia along with the proof of mailing from the United States Postal Service or other common carrier.

2. Supporting documentation of the sale of the motor vehicle and the proceeds derived from the sale.

3. The check or other method of payment used to deliver any excess proceeds from the sale of the motor vehicle to a borrower.

D. A motor vehicle title lender shall retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including but not limited to solicitation letters, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of Internet web pages.

E. When the bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information, and such other factors as the bureau determines to be relevant under the circumstances. Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the investigation and examination authority provided for in § 6.2-2212 of the Code of Virginia.

F. If a licensee disposes of records containing a consumer's personal financial information following the expiration of any

applicable record retention periods, such records shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for service from a business record destruction vendor.

**10VAC5-210-100. Enforcement; civil penalties.**

A. Failure to comply with any provision of the Act or this chapter may result in civil penalties, license suspension, license revocation, the entry of a cease and desist order, or other appropriate enforcement action.

B. Pursuant to § 6.2-2222 of the Code of Virginia, a licensee shall be subject to a separate civil penalty of up to $1,000 for every violation of the Act, this chapter, or other law or regulation applicable to the conduct of the licensee's business. If a licensee violates any provision of the Act, this chapter, or other law or regulation applicable to the conduct of the licensee's business in connection with multiple loans or borrowers, the licensee shall be subject to a separate civil penalty for each loan or borrower. For example, if a licensee makes five loans and the licensee violates two provisions of this chapter that are applicable to the five loans, the licensee shall be subject to a maximum civil penalty of $10,000.

**10VAC5-210-110. Commission authority.**

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.

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

FORMS (10VAC5-210)

Personal Financial Report and Disclosure Statement, CCB-1123 (rev. 3/08).

Limited Personal Financial Report and Disclosure Statement, CCB-1143 (rev. 3/08).

Depository Institution Authorization Form, CCB-1149 (rev. 12/04).

Employment and Business Affiliation Disclosure Form, CCB-1150 (rev. 3/08).

Application for a Motor Vehicle Title Lender License pursuant to Chapter 21 of Title 6.1 of the Code of Virginia, CCB-5523 (eff. 6/10).

Motor Vehicle Title Lender Surety Bond pursuant to § 6.1-484 of the Code of Virginia, CCB-5524 (eff. 6/10).

Application for an Additional Office or Relocation of an Existing Office pursuant to Chapter 21 of Title 6.1 of the Code of Virginia, CCB-5525 (eff. 6/10).

Application for Permission to Acquire Control of a Motor Vehicle Lender Licensee pursuant to § 6.1-488 of the Code of Virginia, CCB-5526 (eff. 6/10).

Application to Conduct the Business of Motor Vehicle Title Lending and Other Business at the Same Location, CCB-5527 (eff. 7/10).

VA.R. Doc. No. R10-2528; Filed July 27, 2010, 9:25 a.m.

# TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

## JOINT BOARDS OF NURSING AND MEDICINE

### Final Regulation

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

Title of Regulation: **18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-130).**

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

Effective Date: September 15, 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.

Summary:

*This action of the Boards of Nursing and Medicine amends 18VAC90-40, Regulations for Prescriptive Authority for Nurse Practitioners, to include unauthorized use or disclosure of confidential information obtained from the Prescription Monitoring Program as grounds for disciplinary action. The amendment conforms the regulation to § 54.1-2525 of the Code of Virginia.*

Part IV
Discipline

**18VAC90-40-130. Grounds for disciplinary action.**

A. The boards may deny approval of prescriptive authority, revoke or suspend authorization, or take other disciplinary actions against a nurse practitioner who:

1. Exceeds his authority to prescribe or prescribes outside of the written practice agreement with the supervising physician;

2. Has had his license as a nurse practitioner suspended, revoked or otherwise disciplined by the boards pursuant to 18VAC90-30-220;

3. Fails to comply with requirements for continuing competency as set forth in 18VAC90-40-55.

B. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program shall be grounds for disciplinary action.

VA.R. Doc. No. R10-2449; Filed July 28, 2010, 2:03 p.m.

## BOARD OF VETERINARY MEDICINE

### Final Regulation

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

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-140).**

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

Effective Date: September 15, 2010.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 662-4426, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Summary:

*This action amends the Board of Veterinary Medicine's regulations relating to unprofessional conduct for conformity to the language of § 54.1-3812.1 of the Code of Virginia (Chapter 574 of the 2010 Acts of the Assembly). 18VAC150-20-140, which sets out grounds for unprofessional conduct, refers to reporting "evidence of animal abuse" while § 54.1-3812.1 of the Code of Virginia refers to reporting "suspected animal cruelty." For consistency with the Code of Virginia and the provision of immunity for such reports, the regulation is amended to use the terminology found in § 54.1-3812.1 of the Code of Virginia.*

Part III
Unprofessional Conduct

**18VAC150-20-140. Unprofessional conduct.**

Unprofessional conduct as referenced in § 54.1-3807(5) of the Code of Virginia shall include the following:

1. Representing conflicting interests except by express consent of all concerned given after a full disclosure of the facts. Acceptance of a fee from both the buyer and the seller is prima facie evidence of a conflict of interest.

2. Practicing veterinary medicine or equine dentistry where an unlicensed person has the authority to control the professional judgment of the licensed veterinarian or the equine dental technician.

3. Issuing a certificate of health unless he shall know of his own knowledge by actual inspection and appropriate tests of the animals that the animals meet the requirements for the issuance of such certificate on the day issued.

4. Revealing confidences gained in the course of providing veterinary services to a client, unless required by law or necessary to protect the health, safety or welfare of other persons or animals.

5. Advertising in a manner which is false, deceptive, or misleading or which makes subjective claims of superiority.

6. Violating any state law, federal law, or board regulation pertaining to the practice of veterinary medicine, veterinary technology or equine dentistry.

7. Practicing veterinary medicine or as an equine dental technician in such a manner as to endanger the health and welfare of his patients or the public, or being unable to practice veterinary medicine or as an equine dental technician with reasonable skill and safety.

8. Performing surgery on animals in an unregistered veterinary establishment or not in accordance with the establishment permit or with accepted standards of practice.

9. Refusing the board or its agent the right to inspect an establishment at reasonable hours.

10. Allowing unlicensed persons to perform acts restricted to the practice of veterinary medicine, veterinary technology or an equine dental technician including any invasive procedure on a patient or delegation of tasks to persons who are not properly trained or authorized to perform such tasks.

11. Failing to provide immediate and direct supervision to a licensed veterinary technician or an assistant in his employ.

12. Refusing to release a copy of a valid prescription upon request from a client.

13. Misrepresenting or falsifying information on an application or renewal form.

14. Failing to report ~~evidence of animal abuse~~ suspected animal cruelty to the appropriate authorities.

15. Failing to release patient records when requested by the owner; a law-enforcement entity; or a federal, state, or local health regulatory agency.

VA.R. Doc. No. R10-2488; Filed July 28, 2010, 2:03 p.m.

EXECUTIVE ORDER NUMBER 21 (2010)

## Use of Virginia's Volume Cap Allocations for Qualified Energy Conservation Bonds

**Background**

Pursuant to Section 54D(e) of the Internal Revenue Code and as described in Notice 2009-29 of the Internal Revenue Service, IRB 2009-16 ("Notice 2009-29"), the Commonwealth of Virginia (the "Commonwealth") received $80,600,000 of the Qualified Energy Conservation Bonds ("QECBs") national bond limitation (the "Commonwealth Allocation"). QECBs are tax credit bonds that may be issued by state or local governments for one or more qualified conservation purposes described in Notice 2009-29.

Notice 2009-29 further provides that the Commonwealth Allocation shall be initially suballocated among large local governments in the Commonwealth (the "Originally Awarded Localities") in an amount that bears the same ratio to the Commonwealth's Allocation as the population of each of such large local governments bears to the population of the Commonwealth (the "Original Locality Suballocations"). For purposes of Section 54D of the Code, the term "large local government" means any municipality or county that has a population of 100,000 or more. In making the Original Locality Suballocations, Notice 2009-29 requires the Commonwealth to use population figures for its large local governments based on available data from the United States Census Bureau for the period that is closest in time to that used for the Commonwealth and released by the Census before 2009. After such suballocation, any amount remaining shall belong to the Commonwealth (the "Original Commonwealth Suballocation"). Originally Awarded Localities may reallocate all or any portion of their respective Original Locality Suballocations to the Commonwealth.

Section 54D(e)(3) of the Internal Revenue Code further provides that not more than 30 percent of the Commonwealth Allocation of QECBs be private activity bonds as determined under Section 141 of the Code (the "70% Use Requirement").

QECBs provide a cost-effective option for financing state and local energy conservation projects. It is important that the Commonwealth and its localities have this financing mechanism available to facilitate projects that reduce energy consumption and energy costs and promote energy conservation. Therefore, to the extent any Originally Awarded Locality determines not to use its Original Locality Suballocation, it is imperative to provide an orderly process for the re-allocation of any such unused amounts (the "Returned Locality Suballocations") for other qualifying projects. Moreover, it is critical that the Commonwealth establish a procedure to reallocate any Returned Locality Suballocations. Lastly, the Commonwealth must establish a procedure to ensure compliance with the 70% Use Requirement.

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and Sections 2.2-103 and 2.2-435.7 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the following Original Locality Suballocations and Original Commonwealth Suballocation, and further direct Chief of Staff Martin Kent to serve as the Commonwealth's QECB allocation director (the "Allocation Director") to establish a procedure for the reallocation of any Returned Locality Suballocations.

**Suballocation**

1. The Original Commonwealth Allocation is $80,600,000.

2. The Original Locality Suballocations are set forth below:

| Locality | Population | Percentage | Suballocation |
|---|---|---|---|
| Fairfax County | 1,004,151 | 13.04% | $10,512,656 |
| Virginia Beach City | 435,004 | 5.65% | $4,554,143 |
| Prince William County | 359,588 | 4.67% | $3,764,598 |
| Chesterfield County | 299,022 | 3.88% | $3,130,521 |
| Henrico County | 289,460 | 3.76% | $3,030,414 |
| Loudoun County | 277,346 | 3.60% | $2,903,590 |
| Norfolk City | 235,982 | 3.07% | $2,470,542 |
| Chesapeake City | 218,830 | 2.84% | $2,290,975 |
| Arlington County | 203,909 | 2.65% | $2,134,764 |
| Richmond City | 199,991 | 2.60% | $2,093,745 |
| Newport News City | 180,810 | 2.35% | $1,892,936 |
| Hampton City | 146,466 | 1.90% | $1,533,382 |
| Alexandria City | 139,848 | 1.82% | $1,464,096 |
| Stafford County | 120,621 | 1.57% | $1,262,805 |
| Spotsylvania County | 118,887 | 1.54% | $1,244,652 |
| Portsmouth City | 101,931 | 1.32% | $1,067,136 |
| Total Locality Suballocation | | | $45,350,954 |

3. The Original Commonwealth Suballocation is $35,249,046.

4. Any Originally Awarded Localities that do not plan to use any portion of their Original Locality Suballocations should notify the Allocation Director so that their Returned Locality Suballocations may be reallocated to another locality or project within the Commonwealth.

5. The Allocation Director shall develop a process for the application, evaluation and re-allocation of any Returned Locality Suballocations to maximize the use of this financing mechanism to promote energy conservation within the Commonwealth.

6. Each Originally Awarded Locality shall ensure compliance with the 70% Use Requirement and upon issuance of any QECBs using such Originally Awarded Locality's Original Locality Suballocation shall provide a copy of the IRS Form 8038 to the Allocation Director.

7. The Allocation Director is hereby authorized to delegate to any official or agency or department of the Commonwealth any matter or task described herein, to take any action that he, as the Allocation Director, deems necessary or desirable to affect the purposes hereof, and to create an advisory committee consistent with, and in furtherance of, this Executive Order.

8. Determination of compliance with the procedures and requirements set forth herein or in the additional guidance, including any filings to be made and the timing and substance thereof, shall be subject to the sole discretion of the Allocation Director.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until December 31, 2013, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 20th day of July, 2010.

/s/ Robert F. McDonnell
Governor

## STATE CORPORATION COMMISSION

### Bureau of Financial Institutions

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2010-00144

Ex Parte: In re: annual assessment
of licensed money order sellers and
money transmitters

RESPONSE TO COMMENTS

Pursuant to the Order Directing Response to Comments that was entered by the State Corporation Commission ("Commission") on June 22, 2010, the Bureau of Financial Institutions ("Bureau"), by counsel, submits this response to the written comments that were filed by Mr. Randy Mersky on behalf of Global Express Money Orders, Inc.

In his comment letter, Mr. Mersky asserted that money orders and money transmission services are very distinct financial service products, and that it would be unfair for the Commission to apply the same assessment rate to both products. In support of his position that the assessment rate for money orders should be much lower than the assessment rate for money transmission, Mr. Mersky contended that the examination process has historically been more complicated, involved, and time consuming for money transmission. Mr. Mersky also stated that examinations for larger businesses are more extensive and take longer than they do for smaller businesses, so he also recommended that the assessment schedule take into account a licensee's overall size or net worth.

As Mr. Mersky indicated in his written comments, the proposed regulation does not differentiate between money orders sold and money transmitted for purposes of calculating the annual assessment. While the Bureau concurs with Mr. Mersky's observation that money orders are distinguishable from money transmission services, the Bureau does not believe that the examination of money transmitters is more complicated, involved, and time consuming than the examination of money order sellers. Since the Bureau has only been examining licensed money order sellers and money transmitters for a short period of time, the Bureau has very limited firsthand information regarding the relative complexity and duration of its examinations of money order sellers and money transmitters. Therefore, the Bureau contacted regulators in several other states (California, Ohio, Texas, and Wyoming) that have substantial experience regulating and examining money order sellers and money transmitters. All of the state regulators uniformly indicated that (i) money order sellers must comply with the same laws as money transmitters, (ii) regulators use the same programs and procedures to examine both products, and (iii) the time allotted by regulators for examinations is identical. Moreover, in certain respects such as a licensee's permissible investments and financial condition, money orders may necessitate more examiner time and analysis than is required for money transmission because licensees tend to have much larger portions of their money orders outstanding. Accordingly, based on the information gathered by the Bureau from the aforementioned states, Mr. Mersky's comparison of money order seller and money transmitter examinations appears to be outdated or inaccurate.

It is unclear to the Bureau from Mr. Mersky's comment letter whether he is proposing to measure a licensee's "overall size" by its net worth for purposes of distinguishing between "larger businesses" and "smaller businesses." If Mr. Mersky was contemplating an alternative means of gauging a licensee's size, then the Bureau might be inclined to subscribe to his broad generalization that examinations for larger businesses are more extensive and take longer than they do for smaller businesses. However, with respect to Mr. Mersky's suggestion that the assessment schedule take into account a licensee's overall size or net worth, it is the Bureau's opinion that the complexity and length of a particular licensee's examination is properly and sufficiently factored into the proposed assessment schedule through the dollar amount of money orders sold and money transmitted by a licensee pursuant to Chapter 12 of Title 6.1 of the Code of Virginia. Moreover, a licensee's dollar volume of business usually reflects the relative size of the institution when compared to other licensees, and the Bureau is unable to discern any meaningful nexus between licensees' net worth and the Bureau's examinations. Consequently, it is the Bureau's view that the overall size or net worth of a licensed money order seller or money transmitter is redundant and/or inapt as a proxy for the amount of regulatory resources that need to be devoted to an institution. Therefore, the Commission should not incorporate a licensee's overall size or net worth as an additional factor in the assessment schedule.

In conclusion, the Bureau believes that the proposed assessment schedule accurately and fairly reflects the comparable amount of time and effort that is entailed in examining and supervising money order sellers and money transmitters. Contrary to Mr. Mersky's remark, the proposed schedule is not expected to result in smaller businesses subsidizing the costs associated with examining larger businesses. Accordingly, the Bureau recommends that the Commission adopt the regulation as proposed.

Respectfully submitted,

BUREAU OF FINANCIAL INSTITUTIONS

By: Todd E. Rose, Associate General Counsel, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9671.

Dated: June 25, 2010

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COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2010-00144

Ex Parte: In re: annual assessment
of licensed money order sellers and
money transmitters

SUPPLEMENT TO RESPONSE

COMES NOW the Bureau of Financial Institutions ("Bureau"), by counsel, and requests leave to supplement the Response to Comments ("Response") that it filed on June 25, 2010. In support of its request, the Bureau states the following:

(1) On June 22, 2010, the State Corporation Commission ("Commission") entered an Order requiring the Bureau to file a written response to the comments that were filed by Mr. Randy Mersky on behalf of Global Express Money Orders, Inc.

(2) On June 25, 2010, the Bureau filed its Response. In its Response, the Bureau informed the Commission that it had contacted regulators in several other states (California, Ohio, Texas, and Wyoming) that have substantial experience regulating and examining money order sellers and money transmitters, and that these other states had uniformly indicated to the Bureau that (i) money order sellers must comply with the same laws as money transmitters; (ii) regulators use the same programs and procedures to examine both products; and (iii) the time allotted by regulators for examinations is identical.

(3) The Bureau inadvertently omitted certain additional information that is germane to its Response. Specifically, the state of Ohio had also advised the Bureau that it applies the same assessment rate to money order sellers and money transmitters. Regulators in the states of Texas and Wyoming also informed the Bureau that they assess money order sellers and money transmitters using the same assessment rate. In the state of California, the assessment calculation for money order sellers appears to be handled differently than the assessment calculation for money transmitters. However, based on the information that it received, the Bureau is unable to reach any definitive conclusions regarding the relative assessment rates.

WHEREFORE, the Bureau respectfully requests that the preceding supplemental information be appended to its Response.

Respectfully submitted,

BUREAU OF FINANCIAL INSTITUTIONS

By: Todd E. Rose, Associate General Counsel, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218-1197, telephone (804) 371-9671, FAX (804) 371-9240.

Dated: July 8, 2010

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Proposed Action for BFI Waste Systems of Virginia, L.L.C.

An enforcement action has been proposed for BFI Waste Systems of Virginia, L.L.C., for alleged stormwater effluent violations at the Old Dominion landfill located at 2001 Charles City Road, Richmond, VA. The consent order requires corrective action and payment of a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments from August 16, 2010, to September 16, 2010, by email at frank.lupini@deq.virginia.gov, FAX at (804) 527-5106 or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060.

### Coastal Zone Management Program - Notice of Updates to Enforceable Policies

This public notice is to inform interested parties that the Virginia Coastal Zone Management Program's enforceable policies have been updated and incorporated into the Program.

The Coastal Zone Management Act (15 CFR 923.80) requires states to formally incorporate any amendments, modifications, or other changes to approved management programs, including policies that the state uses or intends to use for federal consistency. The changes discussed were previously made to the individual policies and are now formally incorporated into the Virginia Coastal Zone Management Program. These updates are considered to be routine program changes, and therefore do not significantly affect (i) uses subject to management; (ii) special management areas; (iii) boundaries; (iv) authorities and organization; or (v) coordination, public involvement, and national interest components of the Virginia Coastal Resources Management Program.

A summary of the updates and sections that were withdrawn can be found in the notice on the Department of Environmental Quality's website at: http://www.deq.virginia.gov/coastal/2010programchanges.html.

In addition the text of these changes and an analysis of their implication to the Virginia Coastal Zone Management

Program is available at http://www.deq.virginia.gov/coastal/2010programchanges.html. The National Oceanic and Atmospheric Administration's approval letter of June 23, 2010, includes the specific code sections and denotes sections that were incorporated but do not contain enforceable policies. This letter can be accessed at http://www.deq.virginia.gov/coastal/documents/2010progchangeacceptltr.pdf.

If you require paper copies of any of these documents, please contact the Virginia Coastal Zone Management Program listed below.

Contact Information: April Bahen, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4005, or email april.bahen@deq.virginia.gov.

## STATE LOTTERY DEPARTMENT

### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on July 16, 2010. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Sixty-Two (10)

Virginia's Instant Game Lottery 1194; "Redskins Legacy" Final Rules for Game Operation (effective July 15, 2010)

Director's Order Number Sixty-Three (10)

Virginia's Instant Game Lottery 1196; "Monopoly" Final Rules for Game Operation (effective July 15, 2010)

Director's Order Number Sixty-Four (10)

Virginia's Instant Game Lottery 1199; "Jewel 7's" Final Rules for Game Operation (effective July 15, 2010)

## STATE BOARD OF SOCIAL SERVICES

### Notice of Periodic Review

Pursuant to Executive Order Number 14 (2010), the Department of Social Services is currently reviewing 22VAC40-745, Assessment in Assisted Living Facilities, to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 14 (2010) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Written comments may be submitted until September 6, 2010, in care of Paige McCleary, Adult Services Program Consultant, Virginia Department of Social Services, 801 East Main Street, Richmond, VA 23219, by FAX to (804) 726-7895, or by email to paige.mccleary@dss.virginia.gov.

### Notice of Periodic Review

Pursuant to Executive Order Number 14 (2010), the Department of Social Services is currently reviewing 22VAC40-901, Community Services Block Grant Program, to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 14 (2010) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Written comments may be submitted until September 6, 2010, in care of J. Mark Grigsby, Director, Office of Community Services, Virginia Department of Social Services, 801 East Main Street, Richmond, VA 23219, by FAX to (804) 726-7946, or by email to james.grigsby@dss.virginia.gov.

## STATE WATER CONTROL BOARD

### Proposed Action for Samuel Aman

An enforcement action has been proposed for Samuel Aman to resolve wetland and state waters violations pertaining to the Virginia Water Protection program. The proposed enforcement action contains a schedule of compliance with detail corrective measure requirements and incorporates a supplemental environmental project to be completed by Samuel Aman. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. David Miles will accept comments from August 17, 2010, to September 15, 2010, by email at david.miles@deq.virginia.gov, FAX at (434) 582-5125, or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502.

### Proposed Action for the Arlington County Board

An enforcement action has been proposed for the Arlington County Board for violations in Arlington County. These

violations include unauthorized discharges of partially treated sewage from the Arlington County Water Pollution Control Plant into Four Mile Run. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Sarah Baker will accept comments from August 17, 2010, through September 16, 2010, by email at sarah.baker@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193.

### Proposed Action for the Town of Cape Charles

An enforcement action has been proposed for the Town of Cape Charles, Northampton County, for alleged violations of the Virginia Pollutant Discharge Elimination System Permit at the Town's wastewater treatment plant. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Paul R. Smith will accept comments from August 14, 2010, to September 15, 2010, by email at paul.smith@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462.

### Proposed Action for Courtney Development, Inc.

An enforcement action has been proposed for Courtney Development, Inc. for alleged violations at the Crossridge subdivision in Henrico County, VA. The State Water Control Board proposes to issue a consent special order to Courtney Development, Inc. to address noncompliance with Virginia Water Protection Permit regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Cynthia Akers will accept comments from August 16, 2010, to September 15, 2010, by email at e.cynthia.akers@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060.

### Proposed Action for Halifax County Service Authority

An enforcement action has been proposed for the Halifax County Service Authority for violations at the Maple Avenue Wastewater Treatment Plant located in the Town of South Boston. The proposed enforcement action contains a schedule of compliance which details the corrective action required. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. G. Marvin Booth, III will accept comments from August 16, 2010, to September 16, 2010, by email at marvin.booth@deq.virginia.gov, FAX at (434) 582-5125, or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502.

### Proposed Action for IMTT-Virginia

An enforcement action has been proposed for IMTT-Virginia, Chesapeake, for alleged violations of Virginia State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. John Brandt will accept comments from August 16, 2010, to September 15, 2010, by email at john.brandt@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462.

### Proposed Action for KmX Chemical Corp.

An enforcement action has been proposed for KmX Chemical Corp. for alleged violations of the Virginia State Water Control Law at the KmX Facility at 30474 Energy Drive, New Church, Accomack County, concerning the unauthorized discharge of pollutants to state waters. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Paul R. Smith will accept comments from August 14, 2010, to September 15, 2010, by email at paul.smith@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462.

### Proposed Action for Metro Used Auto Parts, Inc.

An enforcement action has been proposed for Metro Used Auto Parts, Inc., for alleged violations of Virginia Pollutant Discharge Elimination General Permit VAR05 at the Metro automobile salvage yard at 5209 Sondej Avenue in the City of Chesapeake. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Paul R. Smith will accept comments from August 16, 2010, to September 15, 2010, by email at paul.smith@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462.

### Proposed Action for North Carolina & Virginia Railroad Company, L.L.C.

An enforcement action has been proposed for the North Carolina & Virginia Railroad Company, L.L.C., for alleged violations of the Virginia State Water Control Law concerning the unauthorized discharge of oil to state waters, the Albemarle Canal in the City of Chesapeake. A description

of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Paul R. Smith will accept comments from August 16, 2010, to September 15, 2010, by email at paul.smith@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462.

### Draft 2010 Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) will release the Draft 2010 Water Quality Assessment Integrated Report (Integrated Report) on August 23, 2010, for public comment. The final report will be released this fall after review and approval by the United States Environmental Protection Agency.

The Integrated Report combines both the § 305(b) Water Quality Assessment Report and the § 303(d) List of Impaired Waters. Both are required by the Federal Clean Water Act and the Virginia Water Quality Monitoring Information and Restoration Act. The 2010 report is based on Water Quality Standards in effect as of February 1, 2010. This report will be available for download at http://www.deq.virginia.gov/wqa/ throughout the public comment period, which ends on Friday, September 24, 2010, at 5 p.m.

A CD with a copy of the final report and associated maps can be pre-ordered at no charge via the website above (limit one per person). Anyone who received the report on CD in 2008 will automatically receive a 2010 final report CD. Hard copies of the report will only be printed upon request, via the website. The online maps will also be included on the final report CD.

A webinar summarizing the findings in the report will be held on the Internet on August 26, 2010, from 11 a.m. to noon. Interested persons must register in advance at https://www1.gotomeeting.com/register/267343337.
Questions about the report may be submitted online during the webinar.

Written comments on the draft 2010 Integrated Report may be sent to the contact person below. Please include your name, U.S. mail address, telephone number, and email address so DEQ can add you to its notification list for future assessments.

Contact Information: Darryl Glover, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4321, FAX (804) 698-4416, or email darryl.glover@deq.virginia.gov.

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

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

### 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.