



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**THE VIRGINIA REGISTER OF REGULATIONS** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, 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. **28:2 VA.R. 47-141 September 26, 2011**, refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

*The Virginia Register of Regulations* is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Tavenner**; **Patricia L. West**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

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

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

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## April 2012 through April 2013

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
28:16	March 21, 2012	April 9, 2012
28:17	April 4, 2012	April 23, 2012
28:18	April 18, 2012	May 7, 2012
28:19	May 2, 2012	May 21, 2012
28:20	May 16, 2012	June 4, 2012
28:21	May 30, 2012	June 18, 2012
28:22	June 13, 2012	July 2, 2012
28:23	June 27, 2012	July 16, 2012
28:24	July 11, 2012	July 30, 2012
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012
29:1	August 22, 2012	September 10, 2012
29:2	September 5, 2012	September 24, 2012
29:3	September 19, 2012	October 8, 2012
29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012 ( <b>Tuesday</b> )	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012 ( <b>Tuesday</b> )	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013
29:12	January 23, 2012	February 11, 2013
29:13	February 6, 2012	February 25, 2013
29:14	February 20, 2012	March 11, 2013
29:15	March 6, 2012	March 25, 2013
29:16	March 20, 2012	April 8, 2013
29:17	April 3, 2012	April 22, 2013

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

#### Agency Decision

Title of Regulation: **18VAC60-20. Regulations Governing Dental Practice.**

Statutory Authority: §§ 2.2-4007 and 54.1-2400 of the Code of Virginia.

Name of Petitioner: Nicole M. Cunha.

Nature of Petitioner's Request: Amend regulations to require Virginia dentists to be trained and equipped to manage medical emergencies consistent with the Six Links of Survival as a condition of initial or continuing licensure.

Agency Decision: Request denied.

Statement of Reason for Decision: The board decided to deny the petition because many of the emergency management requirements requested have already been adopted in a regulatory proposal following an extensive review of all Board of Dentistry regulations. That proposal has not yet been approved for publication, but includes extensive rules relating to training of staff, monitoring, and emergency equipment and management.

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

VA.R. Doc. No. R12-16; Filed March 14, 2012, 11:12 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending **9VAC20-60, Virginia Hazardous Waste Management Regulations**. This regulation provides requirements for the effective management of hazardous waste in the Commonwealth, including the management of hazardous waste that has been deemed universal waste such as mercury-containing lamps. The purpose of the proposed action is to revise the current management requirements and add additional criteria for mercury-containing universal waste lamps.

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

Statutory Authority: §§ 10.1-1402 and 10.1-1426 of the Code of Virginia.

Public Comment Deadline: May 9, 2012.

Agency Contact: Debra Miller, Policy and Planning Specialist, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, TTY (804) 698-4021, or email [debra.miller@deq.virginia.gov](mailto:debra.miller@deq.virginia.gov).

VA.R. Doc. No. R12-3084; Filed March 20, 2012, 10:09 a.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 1. ADMINISTRATION

### STATE BOARD OF ELECTIONS

**REGISTRAR'S NOTICE:** The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

#### Proposed Regulation

**Title of Regulation:** 1VAC20-50. Candidate Qualification (amending 1VAC20-50-20).

**Statutory Authority:** § 24.2-103 of the Code of Virginia.

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

**Public Comment Deadline:** April 30, 2012.

**Agency Contact:** David Blackwood, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8930, or email david.blackwood@sbe.virginia.gov.

#### Summary:

*The proposed amendments (i) incorporate the requirements of Chapter 166 of the 2012 Acts of Assembly relating to the qualifications of a candidate petition circulator and (ii) clarify the use of the term "petition."*

#### 1VAC20-50-20. Material omissions from candidate petitions.

A. Pursuant to the requirements of §§ 24.2-506, 24.2-521, and 24.2-543 of the Code of Virginia, a petition page should not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any petition containing such omissions should be rendered invalid if:

1. The petition submitted is not the double-sided, two-page document, or a copy thereof, provided by the State Board of Elections;
2. The petition does not have the name, or some variation of the name, and address of the candidate on the front of the form;
3. The circulator has not signed the petition affidavit and provided his current address;

4. ~~The circulator is not a registered voter or qualified to register and vote for the candidate~~ The circulator is (i) not a legal resident of the Commonwealth, (ii) a minor, or (iii) a felon whose voting rights have not been restored;

5. The circulator has not signed ~~each~~ the petition ~~page~~ he circulated in the presence of a notary;

6. The circulator has not had a notary sign the affidavit for each petition submitted; or

7. Any combination of the scenarios of this subsection exists.

C. If the circulator signs the petition in the "Signature of Registered Voter," his signature shall be invalidated but the petition ~~page~~ shall be valid notwithstanding any other error or omission.

D. The petition should not be rendered invalid if:

1. An older version of the petition is used (provided that the information presented complies with current laws, regulations, and guidelines);
2. The "office sought" is omitted;
3. The "congressional district" is omitted;
4. The "election information" including (i) county, city, or town in which the election will be held; (ii) election type; and (iii) date of election are omitted;
5. The name of the candidate and office sought are omitted from the back ~~page~~ of the petition;
6. The circulator has not indicated the county, city, or town of his voter registration or voter eligibility in the affidavit;
7. The circulator has not provided the last four digits of his social security number in the affidavit;
8. The notary has not affixed a photographically reproducible seal; or
9. The notary has not included his registration number and commission expiration date.

VA.R. Doc. No. R12-3156; Filed March 21, 2012, 9:56 a.m.

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# Regulations

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## Proposed Regulation

Title of Regulation: **1VAC20-60. Election Administration (amending 1VAC20-60-40).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 30, 2012.

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, or email martha.brissette@sbe.virginia.gov.

### Summary:

*This proposed regulatory action defines when an absentee voter who votes other than in person is considered to have cast his ballot and voted.*

### **1VAC20-60-40. When ballot cast.**

A. A voter, voting in person on election day or voting absentee in-person, has not voted until a permanent record of the voter's intent is preserved.

B. A permanent record is preserved by a voter pressing the vote or cast button on a direct recording electronic machine, inserting an optical scan ballot into an electronic counter, or placing a paper ballot in an official ballot container.

C. A vote has not been cast by the voter unless and until the voter or an officer of election or assistant at the direction of and on behalf of the voter pursuant to § 24.2-649 of the Code of Virginia completes these actions to preserve a permanent record of the vote.

D. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot be cast by any officer of election or other person present.

E. An absentee voter who votes other than in person shall be deemed to have cast his ballot and voted at the moment he personally delivers the ballot to the general registrar or electoral board or relinquishes control over the ballot to the United States Postal Service or other authorized carrier for returning the ballot as required by law.

VA.R. Doc. No. R12-3153; Filed March 21, 2012, 10:10 a.m.

## Proposed Regulation

Title of Regulation: **1VAC20-60. Election Administration (amending 1VAC20-60-20).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 30, 2012.

Agency Contact: David Blackwood, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8930, or email david.blackwood@sbe.virginia.gov.

### Summary:

*The proposed amendments (i) incorporate the requirements of Chapter 166 of the 2012 Acts of the Assembly relating to the qualifications of a referendum petition circulator and (ii) clarify the use of the word "petition."*

### **1VAC20-60-20. Material omissions on referendum petitions.**

A. Pursuant to the requirements of § 24.2-684.1 of the Code of Virginia, a petition should not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any petition containing such omissions should be rendered invalid if:

1. The petition submitted is not the double-sided, ~~two page~~ document, or a copy thereof, provided by the State Board of Elections;
2. The "question" or "referendum issue" is not stated in a manner set forth by law on the front of the petition;
3. The circulator has not signed the petition affidavit and provided his current address;
4. ~~The circulator is not a registered voter or qualified to register and vote on the issue~~ The circulator is (i) not a legal resident of the Commonwealth, (ii) a minor, or (iii) a felon whose rights have not been restored;
5. The circulator has not signed the affidavit for ~~each~~ each the petition ~~page~~ he circulated in the presence of a notary;
6. The circulator has not had a notary sign the affidavit for each petition submitted; or
7. Any combination of the aforementioned scenarios exist.

C. If the circulator signs the petition in the "Signature of Registered Voter" field, his signature shall be invalidated but the petition ~~page~~ shall be valid notwithstanding any other error or omission.

D. Subdivision B 3 of this section does not apply to a school board referendum submitted pursuant to § 24.2-57.2 or 24.2-165 of the Code of Virginia.

E. The petition should not be rendered invalid if:

1. An older version of the petition is used (provided that the information presented complies with current laws, regulations, and guidelines);

2. The "election information" including: (i) county, city, or town in which the election will be held; (ii) election type; and (iii) date of election are omitted;
3. The circulator has not indicated the county, city, or town of his voter registration or voter eligibility in the affidavit;
4. The circulator has not provided the last four digits of his social security number in the affidavit;
5. The notary has not affixed a photographically reproducible seal; or
6. The notary has not included his registration number and commission expiration date.

VA.R. Doc. No. R12-3155; Filed March 21, 2012, 10:01 a.m.



**TITLE 4. CONSERVATION AND NATURAL RESOURCES**

**MARINE RESOURCES COMMISSION**

**Final Regulation**

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

**Title of Regulation:** 4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-40).

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

**Effective Date:** March 29, 2012.

**Agency Contact:** Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

**Summary:**

*The amendment clarifies that the Virginia commercial fishery possession limit for Summer Flounder is the total of the Virginia landing limit and the North Carolina landing limit or trip limit.*

**4VAC20-620-40. Commercial vessel possession and landing limitations.**

A. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, and D of this section:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 10% by weight of

Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.

2. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.

3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. From the first Monday in March through the day preceding the second Monday in November, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of ~~20,000 pounds~~ the combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing limit or trip limit.

2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 15-day period, with the first 15-day period beginning on the first Monday in March.

3. Land in Virginia more than 10,000 pounds of Summer Flounder during each consecutive 15-day period, with the first 15-day period beginning on the first Monday in March.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

C. From the second Monday in November through December 31 of each year, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of ~~20,000 pounds~~ the combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing limit or trip limit.

2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 15-day period, with the first 15-day period beginning on the second Monday in November.

3. Land in Virginia more than a total of 10,000 pounds of Summer Flounder during each consecutive 15-day period, with the first 15-day period beginning on the second Monday in November.



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# Regulations

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4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

D. From January 1 through December 31 of each year, any boat or vessel issued a valid federal Summer Flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of Summer Flounder, except as described in 4VAC20-620-30 F.

E. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all Summer Flounder aboard any vessel landing Summer Flounder in Virginia.

F. Any possession limit described in this section shall be determined by the weight in pounds of Summer Flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any Summer Flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of Summer Flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of Summer Flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection I of this section. A buyer or processor may accept or buy Summer Flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection I of this section.

G. If a person violates the possession limits described in this section, the entire amount of Summer Flounder in that person's possession shall be confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

H. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading Summer Flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of Summer Flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading

of any vessel is complete and the weight of the landed Summer Flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of Summer Flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any Summer Flounder during the period of 9 p.m. to 7 a.m.

I. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload Summer Flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

J. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing Summer Flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

K. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of Summer Flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

VA.R. Doc. No. R12-3146; Filed March 29, 2012, 12:28 p.m.

## Final Regulation

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

**Title of Regulation:** 4VAC20-900. **Pertaining to Horseshoe Crab (amending 4VAC20-900-25).**

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

**Effective Date:** March 28, 2012.

**Agency Contact:** Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email [betty.warren@mrc.virginia.gov](mailto:betty.warren@mrc.virginia.gov).

**Summary:**

*The amendments set the hours during which gill nets may be used to harvest horseshoe crabs and establish a daily trip limit of 250 horseshoe crabs for the gill net fishery.*

**4VAC20-900-25. Commercial fisheries management measures.**

A. It shall be unlawful for any person to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet in any direction of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. From January 1 through June 7 of each year, it shall be unlawful for any person to land, in Virginia, any horseshoe crab harvested from federal waters.

C. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

D. The commercial quota of horseshoe crab for 2012 shall be 152,495 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any person to harvest from Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial quota of horseshoe crab has been attained and announced as such.

E. During each calendar year no more than 40% of the commercial horseshoe crab quota and any and all transfers of quota from other jurisdictions shall be harvested from waters east of the COLREGS Line. It shall be unlawful for any person to harvest horseshoe crabs from waters east of the COLREGS Line, or to land horseshoe crabs, in Virginia, that are harvested east of the COLREGS Line, after 40% of Virginia's horseshoe crab quota and any and all transfers of quota have been attained for this designated area and announced as such.

F. It shall be unlawful for any person whose harvest of horseshoe crabs is from waters east of the COLREGS Line to possess aboard a vessel or to land in Virginia any quantity of horseshoe crabs that, in aggregate, is not comprised of at least a minimum ratio of two male horseshoe crabs to one female horseshoe crab. For the purposes of this regulation, no horseshoe crab shall be considered a male horseshoe crab unless it possesses at least one modified, hook-like appendage as its first pair of walking legs.

G. Limitations on the daily harvest and possession of horseshoe crabs for any vessel described below are as follows:

1. It shall be unlawful for any person who holds a valid unrestricted horseshoe crab endorsement license, as

described in 4VAC20-900-30 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-30 D and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 1,250.

2. It shall be unlawful for any person who holds a valid restricted horseshoe crab endorsement license, as described in 4VAC20-900-30 E, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,000, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-30 E and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 500. The harvest of horseshoe crabs, described in this subdivision, shall be restricted to using only crab dredge.

3. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a valid horseshoe crab endorsement license to possess horseshoe crabs, without first obtaining a valid horseshoe crab bycatch permit from the Marine Resources Commission. It shall be unlawful for a horseshoe crab bycatch permittee to possess aboard any vessel more than 500 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 500 per day except as described in subdivision 4 of this subsection. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person with a horseshoe crab bycatch permit to possess aboard any vessel more than 250 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 250 per day except as described in subdivision 4 of this subsection.

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 1,000 horseshoe crabs per day. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 500 horseshoe crabs per day.

5. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a horseshoe crab endorsement license or a horseshoe crab bycatch permit to possess any horseshoe crabs.

6. It shall be unlawful for any person who possesses a horseshoe crab endorsement license or a horseshoe crab bycatch permit to harvest horseshoe crabs by gill net, except as described in this subdivision.

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a. Horseshoe crabs shall only be harvested from a gill net, daily, between the hours of sunrise and sunset.

b. It shall be unlawful for any person to land horseshoe crabs caught by a gill net in excess of 250 horseshoe crabs per day.

H. It shall be unlawful for any fisherman issued a horseshoe crab endorsement license to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.

I. When it is projected and announced that 32% of the commercial quota, as described in subsection D of this section, has been taken from waters east of the COLREGS line, the limitations on the possession and landing of horseshoe crabs are as follows:

1. It shall be unlawful for any person who possesses a valid unrestricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 1,250 horseshoe crabs per day.

2. It shall be unlawful for any person who possesses a valid restricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 500 horseshoe crabs per day.

3. It shall be unlawful for any person who possesses a valid horseshoe crab bycatch permit to possess aboard any vessel east of the COLREGS Line or to land more than 250 horseshoe crabs per day.

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel, east of the COLREGS Line, to possess or land more than 500 horseshoe crabs per day.

V.A.R. Doc. No. R12-3147; Filed March 28, 2012, 3:36 p.m.

## Emergency Regulation

Title of Regulation: **4VAC20-900. Pertaining to Horseshoe Crab (amending 4VAC20-900-25).**

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Date: March 29, 2012, through April 28, 2012.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

### Preamble:

*This emergency action establishes (i) licensing requirements for the harvesting of horseshoe crabs by hand and exemptions from these requirements and (ii) commercial fisheries management measures for horseshoe crabs, including an annual commercial quota, that comply*

*with the provisions of the Interstate Fishery Management Plan for Horseshoe Crab.*

### 4VAC20-900-25. Commercial fisheries management measures.

A. It shall be unlawful for any person to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet in any direction of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. From January 1 through June 7 of each year, it shall be unlawful for any person to land, in Virginia, any horseshoe crab harvested from federal waters.

C. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

D. The commercial quota of horseshoe crab for 2012 shall be 152,495 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any person to harvest from Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial quota of horseshoe crab has been attained and announced as such.

~~E. During each calendar year no more than 40% of the commercial horseshoe crab quota and any and all transfers of quota from other jurisdictions shall be harvested from waters east of the COLREGS Line. It shall be unlawful for any person to harvest horseshoe crabs from waters east of the COLREGS Line, or to land horseshoe crabs, in Virginia, that are harvested east of the COLREGS Line, after 40% of Virginia's horseshoe crab quota and any and all transfers of quota have been attained for this designated area and announced as such.~~

E. It shall be unlawful for any person to harvest or land horseshoe crabs during any calendar year from waters east of the COLREGS line, except as described in subdivisions 1 and 2 of this subsection.

1. It shall be unlawful for any person to harvest or land any amount of horseshoe crabs from waters east of the COLREGS line by nontrawl gears, as described in subsections A, C, D, and E of 4VAC20-900-36, that exceeds 27.512% of the commercial horseshoe crab quota.

2. It shall be unlawful for any person to harvest or land any amount of horseshoe crabs from waters east of the COLREGS line by trawl gears, as described in subsection

B of 4VAC20-900-36, that exceeds 12.488% of the commercial horseshoe crab quota.

3. It shall be unlawful for any person to harvest or land horseshoe crabs from waters east of the COLREGS line by any gear after 40% of Virginia's commercial horseshoe crab quota and any and all transfers of quota have been attained for this designated area and announced as such.

F. It shall be unlawful for any person whose harvest of horseshoe crabs is from waters east of the COLREGS Line to possess aboard a vessel or to land in Virginia any quantity of horseshoe crabs that, in aggregate, is not comprised of at least a minimum ratio of two male horseshoe crabs to one female horseshoe crab. For the purposes of this regulation, no horseshoe crab shall be considered a male horseshoe crab unless it possesses at least one modified, hook-like appendage as its first pair of walking legs.

G. Limitations on the daily harvest and possession of horseshoe crabs for any vessel described below are as follows:

1. It shall be unlawful for any person who holds a valid unrestricted horseshoe crab endorsement license, as described in 4VAC20-900-30 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-30 D and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 1,250.

2. It shall be unlawful for any person who holds a valid restricted horseshoe crab endorsement license, as described in 4VAC20-900-30 E, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,000, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-30 E and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 500. The harvest of horseshoe crabs, described in this subdivision, shall be restricted to using only crab dredge.

3. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a valid horseshoe crab endorsement license to possess horseshoe crabs, without first obtaining a valid horseshoe crab bycatch permit from the Marine Resources Commission. It shall be unlawful for a horseshoe crab bycatch permittee to possess aboard any vessel more than 500 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 500 per day except as described in subdivision 4 of this subsection. When it is projected and announced that 80% of the commercial quota

is taken, it shall be unlawful for any person with a horseshoe crab bycatch permit to possess aboard any vessel more than 250 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 250 per day except as described in subdivision 4 of this subsection.

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 1,000 horseshoe crabs per day. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 500 horseshoe crabs per day.

5. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a horseshoe crab endorsement license or a horseshoe crab bycatch permit to possess any horseshoe crabs.

6. It shall be unlawful for any person who possesses a horseshoe crab endorsement license or a horseshoe crab bycatch permit to harvest horseshoe crabs by gill net, except as described in this subdivision.

a. Horseshoe crabs shall only be harvested from a gill net, daily, between the hours of sunrise and sunset.

b. It shall be unlawful for any person to land horseshoe crabs caught by a gill net in excess of 250 horseshoe crabs per day.

H. It shall be unlawful for any fisherman issued a horseshoe crab endorsement license to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.

I. When it is projected and announced that 32% of the commercial quota, as described in subsection D of this section, has been taken from waters east of the COLREGS line, the limitations on the possession and landing of horseshoe crabs are as follows:

1. It shall be unlawful for any person who possesses a valid unrestricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 1,250 horseshoe crabs per day.

2. It shall be unlawful for any person who possesses a valid restricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 500 horseshoe crabs per day.

3. It shall be unlawful for any person who possesses a valid horseshoe crab bycatch permit to possess aboard any vessel east of the COLREGS Line or to land more than 250 horseshoe crabs per day.

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel, east of the

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COLREGS Line, to possess or land more than 500 horseshoe crabs per day.

V.A.R. Doc. No. R12-3163; Filed March 29, 2012, 12:37 p.m.

## Final Regulation

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

**Title of Regulation:** 4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-45).

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

**Effective Date:** March 28, 2012.

**Agency Contact:** Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email [betty.warren@mrc.virginia.gov](mailto:betty.warren@mrc.virginia.gov).

### Summary:

*The amendment sets the open recreational fishing seasons as May 19 through October 14 and November 1 through December 31.*

### 4VAC20-950-45. Recreational possession limits and seasons.

A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 25 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for that boat or vessel and shall be equal to the number of persons on board legally eligible to fish, multiplied by 25. The captain or operator of the boat or vessel shall be responsible for that boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The open recreational fishing season shall be from May 22 ~~19~~ through October ~~14~~ and from November 1 through December 31.

V.A.R. Doc. No. R12-3148; Filed March 28, 2012, 3:58 p.m.

## Emergency Regulation

**Title of Regulation:** 4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-48).

**Statutory Authority:** §§ 28.2-201 and 28.2-210 of the Code of Virginia.

**Effective Date:** March 29, 2012, through April 28, 2012.

**Agency Contact:** Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email [betty.warren@mrc.virginia.gov](mailto:betty.warren@mrc.virginia.gov).

### Preamble:

*This emergency action establishes the minimum size limits, gear restrictions, and quotas for the harvest of black sea bass.*

### 4VAC20-950-48. Individual fishery quotas; bycatch limit; at sea harvesters; exceptions.

A. Each person possessing a directed fishery permit shall be assigned an individual fishery quota, in pounds, for each calendar year. ~~Except as provided in subsection F of this section, a~~ A person's individual fishery quota shall be equal to that person's percentage of the total landings of black sea bass in Virginia from July 1, 1997, through December 31, 2001, multiplied by the directed commercial fishery black sea bass quota for the calendar year. Any directed fishery permittee shall be limited to landings in the amount of his individual fishery quota, in pounds, in any calendar year and it shall be unlawful for any permittee to exceed his individual fishery quota. In addition to the penalties prescribed by law, any overages of an individual's fishery quota shall be deducted from that permittee's individual fishery quota for the following year.

B. In the determination of a person's percentage of total landings, the commission shall use the greater amount of landings from either the National Marine Fisheries Service Dealer Weigh-out Reports or National Marine Fisheries Service Vessel Trip Reports that have been reported and filed as of November 26, 2002. If a person's percentage of the total landings of black sea bass is determined by using the Vessel Trip Reports as the greater amount, then the person shall provide documentation to the Marine Resources Commission to verify the Vessel Trip Reports as accurate. This documentation may include dealer receipts of sales or other pertinent documentation, and such documentation shall be submitted to the commission by December 1, 2004. In the event the commission is not able to verify the full amount of the person's Vessel Trip Reports for the qualifying period, the commission shall use the greater amount of landings, from either the Dealer Weigh-Out Reports or the verified portion of the Vessel Trip Reports to establish that person's share of the quota.

C. It shall be unlawful for any person harvesting black sea bass to possess aboard any vessel in Virginia waters any amount of black sea bass in excess of the combined total of any portion of the Virginia permitted landing limit, as described in subsection A of this section, and the North Carolina legal landing limit.

~~C. D.~~ It shall be unlawful for any person permitted for the bycatch fishery to do any of the following:

1. Possess aboard a vessel or land in Virginia more than 200 pounds of black sea bass in addition to the North Carolina legal landing limit or trip limit, in any one day, except as provided in subdivision 2 of this subsection;
2. Possess aboard a vessel or land in Virginia more than 1,000 pounds of black sea bass in addition to the North Carolina legal landing limit or trip limit, in any one day, provided that the total weight of black sea bass on board the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, *Loligo* squid, and Atlantic mackerel on board the vessel; or
3. Possess aboard a vessel or land in Virginia more than 100 pounds of black sea bass in addition to the North Carolina legal landing limit or trip limit, when it is projected and announced that 75% of the bycatch fishery quota has been taken.

~~D. E.~~ It shall be unlawful for any person to transfer black sea bass from one vessel to another while at sea.

~~E. F.~~ Any hardship exception quota granted by the commission prior to October 27, 2009, shall be converted to a percentage of the directed fishery quota based on the year in which that hardship exception quota was originally granted. The hardship exception quota shall not be transferred for a period of five years from the date the commission granted that hardship exception quota.

~~F. G.~~ An individual fishery quota, as described in subsection A of this section, shall be equal to an individual's current percentage share of the directed fishery quota, as described in 4VAC20-950-47 A.

VA.R. Doc. No. R12-3164; Filed March 29, 2012, 12:40 p.m.

**Final Regulation**

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

Title of Regulation: **4VAC20-1260. Pertaining to River Herring (amending 4VAC20-1260-20, 4VAC20-1260-30).**

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

Effective Date: March 29, 2012.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

*The amendments clarify that it is unlawful for any person to (i) catch and retain possession of any river herring from Virginia Tidal waters or (ii) possess any river herring aboard a vessel. The amendments require that any imported river herring or by-product be accompanied by a bill of lading or commercial invoice with the seller's name, date of sale, and weight in pounds of river herring product.*

**4VAC20-1260-20. Definition.**

The following ~~term~~ terms when used in this chapter shall have the following ~~meaning~~ meanings unless the context clearly indicates otherwise:

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"River herring" means any fish of the species *Alosa aestivalis* or *Alosa pseudoharengus*.

**4VAC20-1260-30. Moratorium.**

A. It shall be unlawful for any person to possess catch and retain possession of any river herring in the Commonwealth of Virginia from Virginia tidal waters.

B. It shall be unlawful for any person to possess aboard a vessel on Virginia tidal waters or to land in Virginia any river herring.

C. Any river herring or its byproduct imported into Virginia from another state or country shall be accompanied by a bill of lading or commercial invoice that shall include the name of the seller, the date of sale, and the pounds of river herring product.

VA.R. Doc. No. R12-3151; Filed March 29, 2012, 12:34 p.m.



**TITLE 8. EDUCATION**

**VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY**

**Final Regulation**

REGISTRAR'S NOTICE: Virginia Polytechnic Institute and State University is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC105-20. Weapons on Campus (adding 8VAC105-20-10 through 8VAC105-20-40).**

Statutory Authority: § 23-122 of the Code of Virginia.

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Effective Date: March 27, 2012.

Agency Contact: Natalie Hart, Deputy Chief of Staff, Virginia Polytechnic Institute and State University, 210 Burruss Hall, Blacksburg, VA 24061, telephone (540) 231-6231, FAX (540) 231-4265, or email [vpas@vt.edu](mailto:vpas@vt.edu).

Summary:

*The regulation establishes the rules regarding the use of weapons on the campus of Virginia Polytechnic Institute and State University.*

**CHAPTER 20**  
**WEAPONS ON CAMPUS**

**8VAC105-20-10. Definitions.**

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

"Firearms" means any gun, rifle, pistol, or handgun designed to fire any projectile including but not limited to bullets, BBs, pellets, or shots, including paint balls, regardless of the propellant used.

"Police officer" means law-enforcement officials appointed pursuant to Article 3 (§ 15.2-1609 et seq.) of Chapter 16 or Chapter 17 (§ 15.2-1700 et seq.) of Title 15.2, Chapter 17 (§ 23-232 et seq.) of Title 23, Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, or Chapter 1 (§ 52-1 et seq.) of Title 52 of the Code of Virginia, currently sworn federal law-enforcement officers, or currently sworn and certified law-enforcement officers of all other jurisdictions of the United States of America.

"University property" means any property owned, leased, or controlled by Virginia Polytechnic Institute and State University.

"Virginia Tech" means Virginia Polytechnic Institute and State University.

"Weapons" means any instrument of combat, or any object not designed as an instrument of combat but carried for the purpose of inflicting or threatening bodily injury. Examples include but are not limited to (i) firearms; (ii) knives with fixed blades or pocket knives with blades longer than four inches; (iii) razors or metal knuckles; (iv) blackjacks, foils, or hatchets; (v) bows and arrows; (vi) nun chahkas; (vii) stun weapons; or (viii) any explosive or incendiary device. Stun weapon is defined as any device that emits a momentary or pulsed output that is electrical, audible, optical, or electromagnetic in nature and that is designed to temporarily incapacitate a person.

**8VAC105-20-20. Possession of weapons prohibited.**

A. The university's employees, students, and volunteers are prohibited from carrying, maintaining, or storing a firearm or weapon on any university property. Any visitor or other third

party attending a sporting, entertainment, or educational event or visiting an academic or administrative office building, dining facility, or residence hall is prohibited from carrying, maintaining, or storing a firearm or weapon on any university facility, even if the owner has a valid permit. This prohibition also applies to all events on campus where people congregate in any public or outdoor areas.

B. Any such individual who is reported or discovered to possess a firearm or weapon on university property will be asked to remove it immediately from university property. Failure to comply may result in a student conduct referral, an employee disciplinary action, or arrest.

**8VAC105-20-30. Exceptions to prohibition.**

The following groups are exempted from this regulation:

1. Employees may possess or carry a firearm or weapon only if the employee is:

a. Required to possess the firearm or weapon as a part of the employee's job duties with Virginia Tech;

b. Using the firearm or weapon in conjunction with training received by the employee in order to perform the responsibilities of his job with the university;

c. Residing in university owned houses and is permitted to keep personal firearms on these premises; however, this exception does not extend to employees living in university residence halls;

d. A certified and sworn police officer employed by the Virginia Tech Police Department;

e. Currently a sworn and certified state or federal law-enforcement officer who carries proper identification; or

f. Participating in a program sponsored by the Virginia Tech Police Department wherein the firearms are provided by the department and utilized only during supervision by the department.

2. Students may possess and use appropriate tools, such as saws, knives, and other such implements, necessary for the performance of their job duties or school work, or for student recreational purposes approved under the University Policies for Student Life or while participating in a program sponsored by the Virginia Tech Police Department wherein the firearms are provided by the department and utilized only during supervision by the department.

3. Contractors and others on campus whose duties require possession and use of construction equipment, including but not limited to pneumatic nail guns, may possess and use such equipment only in performance of their job duties through a valid contractual or legal relationship with Virginia Tech.

**8VAC105-20-40. Person lawfully in charge.**

In addition to individuals authorized by university policy, Virginia Tech police officers, and other police officers acting pursuant to a mutual aid agreement or by concurrent jurisdiction, are lawfully in charge for the purposes of forbidding entry upon or remaining upon university property while possessing or carrying weapons in violation of this chapter.

VA.R. Doc. No. R12-3158; Filed March 27, 2012, 11:38 a.m.

**TITLE 11. GAMING**

**STATE LOTTERY BOARD**

**Proposed Regulation**

Title of Regulation: **11VAC5-20. Administration Regulations (amending 11VAC5-20-10, 11VAC5-20-60, 11VAC5-20-150, 11VAC5-20-160, 11VAC5-20-170, 11VAC5-20-180, 11VAC5-20-200; repealing 11VAC5-20-70).**

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 8, 2012.

Agency Contact: Mitch Belton, Contract and Project Coordinator, State Lottery Department, 900 East Main Street, 12th Floor, Richmond, VA 23219, telephone (804) 692-7136, FAX (804) 692-7325, or email mbelton@valottery.com.

Basis: Section 58.1-4007 of the Code of Virginia authorizes the State Lottery Board to adopt regulations governing the establishment and operation of a lottery after consultation with the Director of the State Lottery Department.

Purpose: The purpose of the proposed amendments is to remove outdated language, particularly in the definitions section, as it has been over five years since this chapter was last reviewed. With the rapid growth of technology, to include social media, the department would like to take advantage of new communication channels to promote the welfare of Virginia citizens.

Substance: The proposed amendments delete many definitions that refer to purchasing to avoid potential confusion to citizens as the department's procurement process is addressed in § 58.1-4007 A 13 of the Code of Virginia. References to the State Lottery Fund are removed since the appropriation act already addresses the use of this fund.

Issues: The proposed amendments to this chapter will further enhance transparency to citizens and add additional clarification to the regulations. The agency does not foresee

any disadvantages to the citizens and businesses of the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Lottery Department proposes to clarify existing requirements and update existing references.

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

Estimated Economic Impact. The proposed changes include removal of numerous definitions not used in the regulations, expansion of the term "advertising media" to include internet and social media, clarification of some of the current requirements, update of certain existing references and removal of obsolete forms. None of the proposed changes will introduce a new requirement or remove an existing requirement. Thus, no significant economic impact is expected other than improving the clarity of the regulations.

Businesses and Entities Affected. The proposed regulations mainly apply to the department. In addition to the department, about 5,191 lottery retailers and approximately 3.1 million lottery players per year are subject to these regulations.

Localities Particularly Affected. No locality is expected to be particularly affected.

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

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

Small Businesses: Costs and Other Effects. While most of the licensed retailers are believed to be small businesses, no significant costs and other effects are expected.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations do not have adverse impact on small businesses.

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

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



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the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis presented by the Department of Planning and Budget and has no comment.

## Summary:

*The proposed amendments clarify existing requirements and update existing references relating to (i) advertising through the Internet, social media, and other electronic means; (ii) procedures for licensing conferences and decisions, and (iii) procurement. The proposed amendments also remove references to the State Lottery Fund; repeal the apportionment of the total revenues received from the sale of tickets or shares; and authorize the board, following the close of evidence presented in public, to consider in closed session its decision with regard to an appeal of the denial, revocation, or suspension of a retailer's license.*

## **11VAC5-20-10. Definitions.**

The following words and terms when used in any of the department's regulations shall have the following meaning meanings unless the context clearly indicates otherwise:

"Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Appeal" means a proceeding initiated by a retailer, bidder, or offeror (for a contract negotiated on a sole source basis), contractor or individual for an informal conference or formal hearing contesting the director's decision (i) to refuse to issue or renew, to suspend or to revoke a lottery license; or (ii) regarding a procurement action.

~~"Award" means a decision to contract with a specific vendor for a specific contract.~~

"Bank" means any commercial bank, savings bank, savings and loan association, credit union, trust company, and any other type or form of banking institution organized under the authority of the Commonwealth of Virginia or of the United States of America which is designated by the State Treasurer to perform functions, activities or services in connection with

the operations of the lottery for the deposit, handling and safekeeping of lottery funds, accounting for those funds and the safekeeping of records.

~~"Bid" means a competitively priced offer made by an intended seller, usually in reply to an invitation for bids.~~

~~"Bid bond" means an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a specific bidder fails to accept the contract as bid.~~

"Board" means the State Lottery Board established by the State Lottery Law.

~~"Competitive bidding" means the offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.~~

~~"Competitive negotiation" means a method for purchasing goods and services, usually of a highly complex and technical nature where qualified individuals or firms are solicited by using a Request For Proposals. Discussions are held with selected vendors and the best offer, as judged against criteria contained in the Request For Proposals, is accepted.~~

"Conference" or "consultation" means a type of appeal in the nature of an informational or factual proceeding of an informal nature provided for in § 2.2-4019 of the Administrative Process Act.

"Conference officer" means the director, or a person appointed by the director, who is empowered to preside at informal conferences or consultations and to provide a recommendation, conclusion or decision in such matter.

"Consideration" means something of value given for a promise to make the promise binding. It is one of the essentials of a legal contract.

"Contract" means a binding agreement, enforceable by law, between two or more parties for the supply of goods or services.

~~"Contract administration" means the management of all facets of a contract to assure that the contractor's total performance is in accordance with the contractual commitments and that the obligations of the purchase are fulfilled.~~

~~"Contracting officer" means the person(s) authorized to sign contractual documents which obligate the State Lottery Department and to make a commitment against State Lottery Department funds.~~

~~"Contractor" means an individual or firm which has entered into an agreement to provide goods or services to the State Lottery Department.~~

"Department" means the State Lottery Department created by the State Lottery Law.

"Depository" means any person, including a bonded courier service, armored car service, bank, central or regional offices of the department, or any state agency that performs any or all of the following activities or services for the lottery:

1. The safekeeping and distribution of tickets to retailers;
2. The handling of lottery funds;
3. The deposit of lottery funds; or
4. The accounting for lottery funds.

"Director" means the Director of the State Lottery Department or his designee.

"Electronic funds transfer (EFT)" means a computerized transaction that withdraws or deposits money from or to a bank account.

"Goods" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007 and 2.2-4019 of the Code of Virginia and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 of the Code of Virginia in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 2.2-4020 of the Code of Virginia in connection with case decisions.

"Household" means members of a group who reside at the same address.

~~"Informalities" means defects or variations of a bid from the exact requirements of the Invitation for Bids which do not affect the price, quality, quantity, or delivery schedule for the goods or services being purchased.~~

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Inspection" means the close and critical examination of goods and services delivered to determine compliance with applicable contract requirements or specifications. It is the basis for acceptance or rejection.

~~"Invitation for Bids (IFB)" means a document used to solicit bids for buying goods or services. It contains or references the specifications or scope of work and all contractual terms and conditions.~~

~~"Kickbacks" means gifts, favors or payments to improperly influence procurement decisions.~~

"Legal entity" means an entity, other than a natural person, which has sufficient existence in legal contemplation that it can function legally, sue or be sued and make decisions through agents, as in the case of a corporation.

~~"Letter contract" means a written preliminary contractual instrument that authorizes a contractor to begin immediately to produce goods or perform services.~~

"Lottery" or "state lottery" means the lottery or lotteries established and operated pursuant to Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia.

~~"Negotiation" means a bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.~~

~~"Noncompetitive negotiations" means the process of arriving at an agreement through discussion and compromise when only one procurement source is practicably available or competitive procurement procedures are otherwise not applicable.~~

~~"Nonprofessional services" means personal services not defined as "professional services."~~

~~"Notice of Award" means a written notification to a vendor stating that the vendor has received a contract with the department.~~

~~"Notice of Intent to Award" means a written notice which is publicly displayed, prior to signing of a contract, that shows the selection of a vendor for a contract.~~

~~"Performance bond" means a contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the department from loss due to his inability to complete the contract in accordance with its terms and conditions.~~

"Person" means a natural person and may extend and be applied to groups of persons, as well as a corporation, company, partnership, association, club, trust, estate, society, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals, unless the context indicates otherwise. In the context of the licensing of lottery sales agents, "person" also means all departments as well as all departments, commissions, agencies, and instrumentalities of the Commonwealth, including counties, cities, municipalities, political subdivisions, agencies and instrumentalities thereof.

~~"Personal services contract" means a contract in which the department has the right to direct and supervise the employee(s) of outside business concerns as if the person(s) performing the work were employees of the department or a contract for personal services from an independent contractor.~~

"Procurement" means the process for obtaining goods or services, including all activities from planning and preparation to processing of a request through the processing of a final invoice for payment.

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~~"Professional services" means services within the practice of accounting, architecture, behavioral science, dentistry, insurance consulting, land surveying, landscape architecture, law, medicine, optometry, pharmacy, professional engineering, veterinary medicine and lottery on-line and instant ticket services.~~

~~"Protest" means a written complaint about a procurement action or decision brought by a bidder or offeror to the department with the intention of receiving a remedial result.~~

~~"Purchase order" (signed by the procuring activity only) means the form which is used to procure goods or services when a bilateral contract document, signed by both parties, is unnecessary, particularly for small purchases. The form may be used for the following:~~

- ~~1. To award a contract resulting from an Invitation For Bids (IFB).~~
- ~~2. To establish a blanket purchase agreement.~~
- ~~3. As a delivery order to place orders under state contracts or other requirements type contracts which were established for such purpose.~~

~~"Request for Information (RFI)" means a document used to get information from the general public or potential vendors on a good or service. The department may act upon the information received to enter into a contract without issuing an IFB or an RFP.~~

~~"Request for Proposals (RFP)" means a document used to solicit offers from vendors for buying goods or services. It permits negotiation with vendors (to include prices) as compared to competitive bidding used in the invitation for bids.~~

~~"Responsible vendor" means a person or firm who has the capability in all respects to fully satisfy the requirements of a contract as well as the business integrity and reliability to assure good faith performance. In determining a responsible vendor, a number of factors including but not limited to the following are considered. The vendor should:~~

- ~~1. Be a regular dealer or supplier of the goods or services offered;~~
- ~~2. Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;~~
- ~~3. Have a satisfactory record of performance; and~~
- ~~4. Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the contract.~~

~~"Responsive vendor" means a person or firm who has submitted a bid, proposal, offer or information which conforms in all material respects to the solicitation.~~

"Retailer" means a person or business licensed by the department as an agent to sell lottery tickets or shares.

"Sales," "gross sales," "annual sales" and similar terms mean total ticket sales including any discount allowed to a retailer for his compensation.

"Services" means any work performed by an independent contractor where the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

"Sole source" means that only one source is practicably available to furnish a product or service.

"Solicitation" means an Invitation for Bids (IFB), a Request for Proposals (RFP), a Request for Information (RFI) or any other document issued by the department or telephone calls by the department to obtain bids or proposals or information for the purpose of entering into a contract.

"State Lottery Law" means Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia.

"Surety bond" means an insurance agreement in which a third party agrees to be liable to pay a specified amount of money to the department in the event the retailer fails to meet his obligations to the department.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

"Vendor" means one who provides goods or services to the department.

## **11VAC5-20-60. Advertising.**

A. Advertising may include, but is not limited to, print advertisements; radio and television advertisements; digital, electronic, and video advertisements; billboards; point of purchase materials and point-of-sale display materials; and Internet and social media.

B. Any lottery retailer may use his own advertising materials unless the department objects thereto. The department shall develop written guidelines for such materials.

C. The department may provide information displays or other material to the retailer, who shall position the material so it can be seen easily by the general public.

D. The department may produce special posters, brochures or flyers describing various aspects of the lottery and provide these to lottery retailers to post or distribute.

## **11VAC5-20-70. Operations of the department. (Repealed.)**

~~A. The department will conduct business with the public, lottery retailers, vendors and others with integrity and honesty.~~

~~B. Apportionment of moneys received from the sale of tickets or shares shall be divided approximately as follows:~~

- ~~55% Prizes, as provided for in the rules of specific games~~
- ~~5.0% Lottery retailer compensation~~
- ~~7.0% Operating expenses (Administrative costs of the lottery shall not exceed 10% of total annual estimated gross revenues to be generated from lottery sales.)~~
- ~~33% Net income~~

~~The percentages may vary from year to year based upon the amount of prize payouts.~~

~~C. The State Lottery Fund will be established as an account in the Commonwealth's accounting system. The account will be established following usual procedures and will be under regulations and controls as other state accounts. Funding will be from gross sales.~~

~~1. Within the State Lottery Fund, there shall be a "Lottery Prize Special Reserve Fund" subaccount created in the State Lottery Fund account which will be used when lottery prize payouts exceed department cash on hand. Unless otherwise provided in the Appropriation Act, 5.0% of monthly gross sales shall be transferred to the Lottery Prize Special Reserve Fund until the amount of the Lottery Prize Special Reserve Fund reaches 5.0% of the gross lottery revenue from the previous year's annual sales or \$5 million, whichever is less.~~

- ~~a. The calculation of the 5.0% will be made for each instant or on-line game.~~
- ~~b. The funding of this subaccount may be adjusted at any time by the board.~~

~~2. Other subaccounts may be established in the State Lottery Fund account as needed at the direction of the board upon the request of the director with concurrence of the State Comptroller and the Auditor of Public Accounts.~~

~~3. In accordance with the Appropriation Act, the State Comptroller provides an interest-free line of credit not to exceed \$25,000,000 to the department. This line of credit is in lieu of the Operations Special Reserve Fund required to be established by the Comptroller in accordance with § 58.1-4022 B of the Code of Virginia. Draw downs against this line of credit are available immediately upon request of the department.~~

~~D. The board and director may address matters not mentioned in Chapters 20 (11VAC5-20), 31 (11VAC5-31), and 41 (11VAC5-41) that are needed or desired for the efficient and economical operation and administration of the lottery.~~

**11VAC5-20-150. Conferences on denial, suspension, or revocation of a retailer's license.**

The conduct of license appeal conferences will conform to the provisions of ~~§ 2.2-4018~~ Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia relating to case decisions.

1. An initial conference consisting of an informal fact finding process will be conducted by the conference officer to attempt to resolve the issue to the satisfaction of the parties involved.
2. If an appeal is not resolved through the informal fact finding process, at the request of the appellant, a formal hearing will be conducted by the board in public. Following the close of the evidence, the board may consider its decision in closed session. The board will then issue its decision on the case.
3. Upon receipt of the board's decision on the case, the appellant may elect to pursue court action in accordance with the provisions of the Administrative Process Act (APA) relating to court review.

**11VAC5-20-160. Procedure for appealing a licensing decision.**

A. Upon receiving a notice that (i) an application for a license or the renewal of a license has been denied by the director, or (ii) the director intends to or has already taken action to suspend or revoke a current license, the applicant or licensed retailer may appeal by filing a written notice of appeal requesting a conference on the licensing action. The notice of appeal shall be submitted within 30 days of receipt of the notice of the licensing action.

1. Receipt of a notice of the licensing action that is mailed in an envelope bearing a United States Postal Service postmark is presumed to have taken place not later than the third day following the day of mailing to the last known address of the applicant or licensed retailer. If the third day falls upon a day on which mail is not delivered by the United States Postal Service, the notice is presumed to have been received on the next business day. The "last known address" means the address shown on the application of an applicant or licensed retailer unless a more current address has been provided to the department by the applicant or licensed retailer.
2. The notice of appeal will be timely if it bears a United States Postal Service postmark showing mailing on or before the 30th day prescribed in subdivision 1 of this subsection A of this section.

B. A notice of appeal may be mailed or hand delivered to the director at the State Lottery Department headquarters office.

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1. A notice of appeal delivered by hand will be timely only if received at the headquarters of the State Lottery Department within the time allowed by subsection A of this section.

2. Delivery to ~~a State Lottery Department regional office~~ any other State Lottery Department office or to lottery sales personnel by hand or by mail is not sufficient.

3. The appellant assumes full responsibility for the method chosen to file the notice of appeal.

C. The notice of appeal shall state:

1. The decision of the director ~~which~~ that is being appealed;

2. The legal and factual basis for the appeal;

3. The retailer's license number ~~or the Retailer License Application Control Number~~; and

4. Any additional information the appellant may wish to include concerning the appeal.

## **11VAC5-20-170. Procedures for conducting informal fact-finding licensing conferences.**

A. The conference officer will conduct an informal fact-finding conference with the appellant for the purpose of resolving the licensing action at issue.

B. The conference officer will hold the conference as soon as possible but not later than 30 days after the notice of appeal is filed, unless an alternate date is designated by the conference officer or his designee and accepted by the appellant. A notice setting out the conference date, time, and location will be sent to the appellant, by certified mail, return receipt requested, at least 10 days before the day set for the conference, unless a shorter time is agreed to by the appellant.

C. A conference may be conducted by telephone, at the option of the appellant.

D. The conferences shall be informal.

1. The conferences will be electronically recorded. The recordings will be kept until the time limit for any subsequent appeal has expired.

2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department. The transcript shall become part of the department's records.

3. The appellant may appear in person or may be represented by counsel to present his facts, argument, or proof in the matter to be heard and may request other parties to appear to present testimony.

4. The department will present its facts in the case and may request other parties to appear to present testimony.

5. Questions may be asked by any of the parties at any time during the presentation of information subject to the conference officer's prerogative to regulate the order of presentation in a manner which, in his sole discretion, best serves the interest of fairly developing the facts.

6. The conference officer may exclude information at any time ~~which~~ that he believes, in his sole discretion, is not germane or ~~which~~ that repeats information already received.

7. The conference officer shall declare the conference completed when the time established by the conference officer has expired.

E. Normally, the conference officer shall issue his decision within 15 days after the conclusion of an informal conference. However, for a conference with a court reporter, the conference officer shall issue his decision within 15 days after receipt of the transcript of the conference. In all cases the agency shall comply with the APA. The decision will be in the form of a letter to the appellant summarizing the case and setting out his decision on the matter. The decision will be sent to the appellant by certified mail, return receipt requested.

F. After receiving the conference officer's decision on the informal conference, the appellant may elect to appeal to the board for a formal hearing on the licensing action. The request for appeal shall:

1. Be submitted in writing within 15 days of receipt of the conference officer's decision on the informal conference;

2. Be mailed or hand delivered to the chairman of the board at the headquarters of the State Lottery Department.

3. Be governed by the same procedures in 11VAC5-20-160 B for filing the original notice of appeal.

4. State:

a. The decision of the conference officer ~~which~~ that is being appealed;

b. The legal and factual basis for the appeal;

c. The retailer's license number ~~or the Retailer License Application Control Number~~; and

d. Any additional information the appellant may wish to include concerning the appeal.

## **11VAC5-20-180. Procedures for conducting formal licensing hearings.**

A. The board will conduct a formal hearing at its next regularly scheduled meeting following the receipt of a notice of appeal on a licensing action; if the date of the scheduled meeting permits the required 10 days notice to the appellant; or at a date to be determined by the chairman of the board and accepted by the appellant.

B. A majority of members of the board is required to hear an appeal. If the chairman and vice chairman of the board are not present, the members present shall choose one from among them to preside over the hearing.

C. The board chairman, at his discretion, may designate a committee of the board to hear licensing appeals and act on its behalf. Such committee shall have at least three members who will hear the appeal on behalf of the board. If the chairman of the board is not present, the members of the committee shall choose one from among them to preside over the hearing.

D. A notice setting the hearing date, time, and location will be sent to the appellant by certified mail, return receipt requested, at least 10 days before the day set for the hearing, unless a shorter time is agreed to by the appellant.

E. The hearing shall be conducted in accordance with the provisions of Article 3 (§ 2.2-4018 et seq.) of the APA (§ 2.2-4018 et seq.) and shall be open to the public.

1. The hearing will be electronically recorded and the recording will be kept until any time limits for any subsequent court appeals have expired.
2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department. The transcript shall become part of the department's records.
3. The provisions of §§ 2.2-4020 through 2.2-4023 of the APA shall apply with respect to the rights and responsibilities of the appellant and of the department.

F. Normally, the board will issue its written decision within 21 days of the conclusion of the hearing. However, for a hearing with a court reporter, the board will issue its written decision within 21 days of receipt of the transcript of the hearing. In all cases the agency shall comply with the APA.

1. A copy of the board's written decision will be sent to the appellant by certified mail, return receipt requested. The original written decision shall be retained by the department and become a part of the case file.
2. The written decision will contain:
  - a. A statement of the facts to be called "Findings of Facts";
  - b. A statement of conclusions to be called "Conclusions" and to include as much detail as the board feels is necessary to set out the reasons and basis for its decision; and
  - c. A statement, to be called "Decision and Order," which sets out the board's decision and order in the case.

G. After receiving the board's decision on the case, the appellant may elect to pursue court review as provided for in the APA.

**11VAC5-20-200. Procurement in general.**

The State Lottery Department will purchase goods or services in accordance with procedures ~~contained in The Virginia Lottery Purchasing Manual established by the board, after consultation with the director, pursuant to Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia.~~

FORMS (11VAC5-20) ~~(Repealed.)~~

~~Informal Conference Request, 1996.~~

~~Formal Administrative Hearing Request, 1996.~~

DOCUMENT INCORPORATED BY REFERENCE (11VAC5-20) ~~(Repealed.)~~

~~The Virginia Lottery Purchasing Manual, Release 1, October 2005, Virginia Lottery Department.~~

VA.R. Doc. No. R12-3001; Filed March 22, 2012; 2:53 p.m.

**Proposed Regulation**

Title of Regulation: **11VAC5-31. Licensing Regulations (amending 11VAC5-31-10 through 11VAC5-31-50, 11VAC5-31-70, 11VAC5-31-80, 11VAC5-31-90, 11VAC5-31-100, 11VAC5-31-130, 11VAC5-31-150, 11VAC5-31-160, 11VAC5-31-180, 11VAC5-31-190; repealing 11VAC5-31-110, 11VAC5-31-120).**

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 8, 2012.

Agency Contact: Mitch Belton, Contract and Project Coordinator, State Lottery Department, 900 East Main Street, 12th Floor, Richmond, VA 23219, telephone (804) 692-7136, FAX (804) 692-7325, or email mbelton@valottery.com.

Basis: Section 58.1-4007 authorizes the State Lottery Board to adopt regulations governing the establishment and operation of a lottery after consultation with the Director of the State Lottery Department.

Purpose: In an effort to become more customer focused, the board is updating this chapter for the first time since its adoption approximately nine years ago. The proposed amendments will ensure the integrity of the department's licensed retailers and promote the welfare of Virginia citizens.

Substance: The proposed amendments (i) add language to clarify the necessary documentation required to become a new license retailer and for renewal by existing lottery retailers; (ii) introduce a new classification, "special retailer" licensing, to allow for the possible expansion of the

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department's products into the market place; (iii) add more flexibility for licensed retailers to receive or maintain bonding requirements; and (iv) add language to define the expected ethical requirements of licensed retailers.

Issues: The proposed amendments will further enhance transparency to citizens and add additional clarification to the regulations. Another advantage is the expansion of the retailer base by adding language to allow for "special retailers" licensing and expanding on various surety instruments available to bond existing or potential retailers.

The agency does not foresee any disadvantages to the citizens and businesses of the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The State Lottery Department (the department) proposes amendments to: (i) establish a new "special retailer" license, (ii) allow the department to change initial and annual renewal license fees up to certain limits, (iii) authorize the department to set retailer compensation at lower rates, (iv) remove the limits of what the department may require in terms of retailer bonding amounts, and (v) allow retailers to offer cash in lieu of traditional bonding instruments.

Result of Analysis. The benefits likely exceed the costs for establishing a new "special retailer" license and allowing retailers to offer cash in lieu of traditional bonding instruments. Allowing the department to change initial and annual renewal license fees up to certain limits, authorizing the department to set retailer compensation at lower rates, and removing the ceiling on required retailer bonding amounts may create unintended costs due to added uncertainty. However, the proposed change for retailer compensation may also allow the department to compensate retailers commensurate with their performance. A different design would likely yield the same benefits at lower cost for these three proposed changes.

Estimated Economic Impact. The proposed regulation would establish a new "special retailer" license for retailers doing business on a seasonal or temporary basis such as those catering to specific sporting, charitable, or social events. Currently, there is one type of retailer license which is typically issued to permanent stores providing a full range of services, e.g. offering online and scratch games and redeeming winning tickets up to a certain amount. The department expects approximately 50 retailers to be licensed as special retailers. These retailers are expected to sell mainly scratch games. The average annual scratch ticket sales per retailer in 2011 was \$147,981 resulting in \$7,399 in sales commissions. If the 50 expected special retailer licensees experience daily volume of business similar to their full time counterparts and operate about a month on average, in a given year, approximately \$608,141 in total sales and \$30,406 in

total commissions could be expected to all of the 50 retailers combined.<sup>1</sup> However, any of these assumptions could greatly vary in reality.

One of the proposed changes will allow the department to increase the initial license fee from \$50 to "up to \$100" and the annual renewal fee from \$35 to "up to \$70". Based on the number of initial and renewal applications in Fiscal Year 2011, approximately \$37,740 in additional revenues from initial applicants and \$177,625 from renewal applicants are expected per year if the department charges the maximum amount allowed under the proposed changes.<sup>2</sup> The department's administrative processing costs are estimated to be \$209,909 and \$419,113 for initial and renewal applications, respectively.<sup>3</sup> Thus, the additional fees will increase the percentage of actual costs paid by applicants from 16% to 32% for initial applications and 42% to 84% for renewal applications. This change would add to the fee revenue collected by the department while increasing the fees paid by the retailers. In addition, the department would have the flexibility to change fees in the future to any amount between \$0 and \$100 for initial applications and between \$0 and \$70 for renewal applications. The flexibility to set fees within a range may be beneficial to the department; however, it adds the element of uncertainty regarding compliance costs for retailers.

Another proposed change would change retailer compensation. Currently, retailer compensation rates are set at the fixed amounts of "5.0% of net sales" and "1.0% of cash value of prizes" paid. Under this regulatory proposal, retailer compensation would be set at "up to 5.0%" of net sales and "up to 1.0%" of cash value of prizes paid (emphasis added). In 2011, the department paid approximately \$81.7 million in sales commissions and \$7.4 million in cash prize commissions to retailers (approximately \$15,749 and \$1,436 per retailer, respectively).

According to the department, flexibility is needed in order to pay lower commissions to the new "special retailer" licensees who are not expected to offer the full range of lottery services on a full time basis like regular retailers. For example, the department may offer a special retailer 2.5% of net sales and 0.5% of cash value of prizes paid as compensation.

With the proposed change, the department would have the authority to change the compensation rate for regular retailers and special retailers from anywhere between 0% to 5% of net sales and anywhere between 0% and 1.0% of the cash value of prizes paid at anytime. This change would afford flexibility to the department and allow the department to compensate stores commensurate with their performances. A compensation structure based on performance would help improve overall retailer performance. However, it also adds some uncertainty for retailers who may prefer to have a fixed amount of compensation for special retailers and a fixed amount of compensation for regular retailers.

Another proposed change in this regulatory proposal is to remove the maximum limit for how much bonding the department can require a retailer to have. Current regulations set the maximum amount of bonding for retailers who sell instant games at \$50,000 and online games at \$100,000. However, the department indicates that retailers sell both instant and online games simultaneously. Actual amounts of bonds currently required vary from \$20,000 to \$100,000 based on the retailer's sales volume and department's potential exposure. According to the department, most retailers are required to post about \$20,000 in bonds at an estimated cost of approximately \$66 - \$68 with good credit. The total amount of surety provided by all retailers is approximately \$107 million.

The department proposes to remove the maximum limits on bonding because it anticipates that at some time in the future, a retailer will outperform current top performers and the department will want to raise the bonding limit to an amount greater than what is set now. This change, however, has the potential to introduce additional costs on retailers in terms of costs associated with required bonding beyond current limits. The amount of the compliance costs would depend on the specific actions of the department and is not known at this time. This change may create some uncertainty about the future compliance costs that a retailer would face and discourage some retailers because the department would be able to require any retailer to post surety greater than current limits at any time. This uncertainty may be eliminated or reduced by keeping in the regulation some sort of limit on the maximum amount of bonding that could be required.

The proposed changes would also allow retailers to offer cash in lieu of currently required traditional bonding instruments. As mentioned before most retailers with good credit pay approximately \$66 - \$68 for \$20,000 in surety bonds. According to the department, in the last several years it has become increasingly difficult for retailers to obtain bonding through traditional instruments. This change would provide an alternative to current bonding requirements. Retailers who stand to gain from this option are expected to utilize it while having no adverse affect on the department's exposure to risk.

The remaining proposed changes to this regulation represent clarifications and reorganization of current requirements and deletion of obsolete forms and are not expected to create any significant economic effects.

**Businesses and Entities Affected.** Currently, this regulation applies to 5,191 licensed retailers.

**Localities Particularly Affected.** The proposed regulation applies throughout the Commonwealth.

**Projected Impact on Employment.** Approximately 50 special retailers are expected to be licensed. Ticket sales by these retailers would represent new business activity and are expected to have a direct positive impact on employment.

On the other hand, the potential for increasing license fees, lowering compensation of current retailers, and increasing bonding amounts can add to the compliance costs and/or uncertainty depending upon their implementation. Increased compliance costs and uncertainty may have a negative impact on business activity and employment which could potentially offset the positive impact of establishing the new "special retailer" license.

**Effects on the Use and Value of Private Property.** The proposed changes are not expected to have a direct impact on the use and value of private property. However, the proposed new license class is expected to generate some asset value in terms of new retailers joining lottery. However, the asset value of existing retailers may be reduced due to additional compliance costs and/or uncertainty stemming from increasing license fees, lowering compensation of current retailers, and increasing bonding depending on their implementation.

**Small Businesses: Costs and Other Effects.** Nearly all of the 5,191 licensed retailers are believed to be small businesses. Therefore, all of the costs and other economics effects discussed above apply to small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The additional compliance costs on retailers will increase if and when the department increases license fees, lowers compensation for existing retailers, and increases bonding amounts. To minimize the impact, these increases should be kept as low as possible.

Beyond the actual amounts of fees, compensation, and bonding chosen to be implemented, the proposed changes provide authority to the department to reduce retailer compensation and increase bonding requirements by unspecified amounts. These two changes may create uncertainty for retailers. This uncertainty may be eliminated or reduced by adopting regulatory language that includes maximum amounts with respect to bonding requirements and specifying special retailer compensation separately from the compensation rate that will be awarded to regular retailers.

**Real Estate Development Costs.** No significant effects on real estate development costs are expected.

**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



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the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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<sup>1</sup>  $(\$147,981/365)*30*50 = \$608,141$ ;  $(\$7,399/365)*30*50 = \$30,406$ .

<sup>2</sup> 755 initial applications at \$50 each and 5,075 renewal applications at \$35 each.

<sup>3</sup> Initial application processing costs are based on 755 applications per year, 7 hours of staff time at \$40 per hour, 755 credit reports at \$10.84 per application, and 755 background checks at \$15 per application. Renewal application processing costs are based on 5,075 applications per year, 2 hours of staff time at \$40 per hour, 507 credit reports at \$10.84 per application, and 507 background checks at \$15 per application.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis presented by the Department of Planning and Budget and has no comments.

## Summary:

*The proposed amendments will (i) establish a new "special retailer" license, (ii) allow the department to increase or decrease initial and annual renewal license fees within certain limits, (iii) authorize the department to set retailer compensation at lower rates, (iv) remove the limits of what the department may require in terms of retailer bonding amounts, and (v) allow retailers to offer cash in lieu of traditional bonding instruments.*

## **11VAC5-31-10. Definitions.**

The following words and terms when used in any of the department's regulations shall have the same meanings as defined in this chapter unless the context clearly indicates otherwise:

"Board" means the State Lottery Board established by the State Lottery Law (Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia).

"Department" means the State Lottery Department created by the State Lottery Law (Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia).

"Director" means the Director of the State Lottery Department or his designee.

"License" means the certificate issued by the department to a retailer who has met the requirements established by the department to sell lottery products.

"Lottery retailer," "lottery sales agent" or "retailer" means a person licensed by the director to sell and dispense lottery tickets or shares products and act as the department's representative to collect, preserve, and account for Commonwealth of Virginia trust funds.

"Person," for purposes of licensing, means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals, as well as all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, municipalities, political subdivisions, agencies and instrumentalities thereof.

"Vacuum fluorescent display" means a player display unit that, when connected to the lottery terminal, presents messages to the customer, such as customer transaction totals, validation and cancellation amounts, and jackpot drawing messages.

## **11VAC5-31-20. Eligibility.**

~~A.~~ Any person who is 18 years of age or older ~~and who is bondable~~ may submit an application for licensure as a lottery retailer in accordance with the provisions and requirements of the department's licensing procedures, except no person may submit an application for licensure:

1. Who will be engaged primarily in the business of selling lottery tickets;
2. Who is a board member, officer, or employee of the State Lottery Department or who resides in the same household as a board member, officer, or employee of the department; or
3. Who is a board member, officer, or employee of any vendor to the department of lottery ticket goods or services, working directly on a contract with the department, or whose business owns, is owned by or controlled by, or affiliated with that vendor.

~~B. The submission of an application, forms or data for licensure does not in any way entitle any person to receive a license to act as a lottery retailer.~~

## **11VAC5-31-30. Application procedure.**

A. Any eligible person shall first file an application with the department by completing all information requested on forms supplied for that purpose, along with submitting ~~the~~ any required fees.

B. The submission of application forms or data for licensure does not in any way entitle any person to receive a license to act as a lottery retailer.

C. The retailer shall submit all required forms and information to the department to be considered for licensing. Failure to submit required forms within the department's licensing procedures may result in the loss of opportunity to become or remain a licensed retailer.

**11VAC5-31-40. General standards for licensing.**

A. The director or his designee may license those persons who, in his opinion, will best serve the public interest and convenience and public trust in the lottery and promote the sale of lottery tickets. Before issuing or renewing a license, the director may consider factors including, but not limited to, the following:

1. The financial responsibility and security of the applicant and his business or activity;
2. The accessibility of his place of business or activity to the public;
3. The sufficiency of existing lottery retailers to serve the public convenience;
4. The volume of expected lottery ticket sales;
5. The ability to offer a high level of customer service to lottery players;
6. Whether the place of business caters to or is frequented predominantly by persons under 18 years of age;
7. Whether the nature of the business constitutes a threat to the health or safety of prospective lottery patrons;
8. Whether the nature of the business is consonant with the probity of the Commonwealth; and
9. Whether the applicant or retailer has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery.

1. Those factors set out in § 58.1-4009 of the Code of Virginia, these regulations, and the department's licensing procedures;

2. The ability to offer a high level of customer service to lottery players;

3. The person's prior history, record, and performance with the department;

4. Whether the place of business caters to or is frequented predominately by persons under 18 years of age;

5. Whether the nature of the business constitutes a threat to the health or safety of prospective patrons;

6. Whether the nature of the business is consonant with the probity of the Commonwealth; and

7. Whether the person or retailer has (i) committed any act of fraud, deceit, misrepresentation, moral turpitude, or illegal gambling or (ii) engaged in conduct prejudicial to public confidence in the state lottery.

~~B. The director may develop and, by director's order, publish additional criteria which, in his judgment, are necessary to serve the public interest and public trust in the lottery.~~

~~C. After notification of selection as a lottery retailer, the retailer shall submit all required forms and information to the department to be considered for licensing. Failure to submit required forms and information within the times specified by the department's licensing procedures may result in the loss of the opportunity to become or remain a licensed retailer.~~

B. Special retailer licensing.

1. The director may license special lottery retailers subject to such conditions or limitations as the director may deem prudent and if the director finds there is a need to develop alternative business models to engage in partnerships with certain retailers that are consistent with the laws of the Commonwealth of Virginia and these regulations. These limitations or conditions may include, but are not limited to:

a. Length of license period;

b. Hours or day of sale;

c. Selling of only limited products;

d. Specific persons who are allowed to sell lottery tickets;

e. Specific sporting, charitable, social, or other special events where lottery tickets may be sold if in conformity with law; or

f. Different commission and payment structures and bonding requirements.

2. Special licensed agents will be subject to these regulations.

**11VAC5-31-50. Bonding of lottery retailers.**

A. A lottery retailer shall have and maintain a surety bond from a surety company entitled to do business in Virginia this Commonwealth. The surety bond shall be in ~~the amount and penalty of up to \$50,000 for instant game retailers and \$100,000 per clerk activated terminal for on line game retailers~~ and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties an amount as deemed necessary to secure the interests of the Commonwealth and the department, in the sole discretion of the director, and shall be payable to the department and conditioned upon the faithful performance of the lottery retailer's duties.

B. The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery

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ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded.

C. Prior to issuance of a license, every lottery sales agent shall either (i) be bonded by a surety company entitled to do business in this Commonwealth in such amount and penalty as may be prescribed by the regulations of the department or (ii) provide such other surety as may be satisfactory to the director, payable to the department, and conditioned upon the faithful performance of his duties. Such alternate surety instruments or arrangements may include, but not be limited to, a combination of surety instruments, including cash.

## **11VAC5-31-70. License term and periodic review.**

A. A general license for an approved lottery ~~retailer sales agent~~ shall be issued for a specific term and is thereafter subject to a periodic determination of continued retailer eligibility and the payment of any fees fixed by the board.

B. The director may issue special licenses to persons for specific events and activities in accordance with the requirements of the department's licensing procedures.

## **11VAC5-31-80. License fees.**

~~The initial general license fee shall be \$50 and the periodic review fee shall be \$35, or as otherwise determined from time to time by the board, and shall be paid in accordance with the department's licensing procedures. The license fees, where applicable, shall be paid for each location. An initial licensing fee up to \$100.00 and an annual license fee up to \$70.00 shall be collected from each lottery sales agent and shall be paid in accordance with the department's licensing procedures. These fees are nonrefundable, unless otherwise determined by the director in his sole discretion or specified in the department's procedures. The license fees shall be paid for each location.~~

## **11VAC5-31-90. Transfer of license prohibited.**

A license issued by the director authorizes a specified person to act as a lottery ~~retailer sales agent~~ at a specified location ~~as set out in the license or locations~~. The license is not transferrable or assignable to any other person ~~or persons or location or locations~~.

## **11VAC5-31-100. Display of license.**

Each licensed lottery retailer shall ~~conspicuously~~ display his lottery license ~~in an area visible to the general public where lottery tickets are sold upon request by any member of the general public~~.

## **11VAC5-31-110. Reporting requirements and settlement procedures. (Repealed.)**

~~Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering tickets; (ii) paying for tickets purchased; (iii) reporting receipts, transactions and~~

~~disbursements pertaining to lottery ticket sales; and (iv) settling the retailer's account with the department.~~

## **11VAC5-31-120. Training of retailers and their employees. (Repealed.)**

~~Each retailer or his designated representative or representatives and anyone that operates an on-line terminal at the retailer's location is required to participate in training. The director may consider nonparticipation as grounds for suspending or revoking the retailer's license.~~

## **11VAC5-31-130. Retailers' conduct.**

A. Each retailer shall comply with all applicable state and federal laws and regulations, as well as all rules, policies and procedures of the department, license terms and conditions, specific rules for all applicable lottery games, directives and instructions that may be issued by the director, and licensing and equipment agreements and contracts signed by the retailer.

~~B. Retailers shall sell lottery tickets at the price fixed by the board. No retailer or his employee or agent shall attempt through any means whatsoever to identify or otherwise determine whether any unsold ticket creates a winning play. This includes, but is not limited to, trying to determine the numbers or symbols appearing under the removable latex or electronically produced coverings or otherwise attempting to identify unsold winning tickets. However, this shall not prevent the removal of the covering over the validation code or validation number after the ticket is sold.~~

~~C. Tickets shall be sold during all normal business hours of the lottery retailer and when the equipment is available, unless the director approves otherwise. No retailer or his employee or agent shall impose a fee or additional charge for selling a lottery game ticket or for cashing a winning lottery game ticket.~~

~~D. Tickets shall be sold only at the location listed on each retailer's license from the department. No retailer or his employee or agent shall purchase a winning lottery game ticket from a player at a discounted price.~~

~~E. Retailers shall not exchange instant ticket packs or tickets or on-line ticket stock with one another, but may transfer instant ticket packs or tickets between or among locations under the same ownership.~~

~~F. No retailer or his employee or agent shall try to determine the numbers or symbols appearing under the removable latex or electronically produced coverings or otherwise attempt to identify unsold winning tickets. However, this shall not prevent the removal of the covering over the validation code or validation number after the ticket is sold.~~

~~G. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. An employee not yet 18 years of age, but who is at least 16 years~~

~~of age, may sell or otherwise vend lottery tickets at the retailer's place of business so long as the employee is supervised by the manager or supervisor in charge at the location where the tickets are being sold.~~

## **11VAC5-31-150. Licensed retailers' compensation.**

A. A licensed retailer shall receive up to 5.0% compensation based on his net ticket sales and up to 1.0% of the cash value of all prizes which the retailer paid.

B. ~~The~~ Except as provided pursuant to the State Lottery Law (§ 58.1-4000 et seq. of the Code of Virginia), the board shall approve any bonus or incentive system for payment to retailers. The director may then award such cash bonuses or other incentives to retailers.

C. Retailers may not accept any compensation for the sale of lottery tickets other than compensation approved under this section, regardless of the source.

D. Nothing in this regulation shall be inconsistent with §§ 58.1-4006 D and 58.1-4007 A 11 of the Code of Virginia.

## **11VAC5-31-160. Denial, suspension, revocation or noncontinuation of license.**

A. The director may refuse to issue a license to a person if the person does not meet the eligibility criteria and standards for licensing as set out in § 58.1-4009 of the Code of Virginia, these regulations, and in the department's licensing procedures, or if:

1. The person's place of business caters to or is frequented predominantly by persons under 18 years of age, but excluding family-oriented businesses;
2. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;
3. The nature of the person's business is not consonant with the probity of the Commonwealth;
4. The person has committed any act of fraud, deceit, misrepresentation, moral turpitude, or illegal gambling or engaged in conduct prejudicial to public confidence in the state lottery; ~~or~~
5. ~~The person has been suspended permanently from a federal or state licensing or authorization program and that person has exhausted all administrative remedies pursuant to the respective agency's regulations or procedures. The person falsifies or misrepresents a material fact on any application, form, document, or data submitted during the licensure process;~~
6. The person has an unsatisfactory prior history, record, or performance with the lottery;
7. The person's place of business represents a substantial risk for the collection, deposit, preservation, accounting, or

safeguarding of Commonwealth of Virginia Trust Funds, irrespective of the bond or surety provided by the person;

8. The person has been suspended permanently from a federal or state licensing or authorization program and that person has exhausted all administrative remedies pursuant to the respective agency's regulations or procedures; or

9. The proposed retailer's licensed location or locations does not comply with the requirements of the department's Retailer Accessibility Guidelines effective January 1, 2011, as applicable.

B. The director may suspend, revoke, or refuse to continue a license for any of the reasons enumerated in § 58.1-4012 of the Code of Virginia, in subsection A of this section, in the department's procedures, or for any of the following reasons:

1. Failure to maintain the required lottery trust account;
2. Failure to comply with lottery game rules;
3. Failure to properly care for, or prevent the abuse of, the department's equipment, or failure to properly position and display the vacuum fluorescent display or LED device;
4. Failure to meet minimum point-of-sale standards; ~~or~~
5. Failure to continue to meet the eligibility criteria and standards for licensing- ; or
6. Failure to comply with (i) any applicable law or statute, rule, policy, or procedure of the department; (ii) license terms and conditions; (iii) specific rules for all applicable department games; (iv) directives and instructions that may be issued by the director; and (v) licensing and equipment agreements and contracts signed by the retailer.

C. Any person refused a license under subsections A or B of this section may appeal the director's decision in the manner provided by 11VAC5-20-150.

D. Before taking action under subsection ~~C~~ A or B of this section, the director will notify the retailer in writing of his intent to suspend, revoke or deny continuation of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a conference. Such notice shall be given to the retailer in accordance with the provisions of the department's regulations.

E. If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing, or investigation into alleged violations is concluded.

F. A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his

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possession and give a final lottery accounting of his lottery activities by the date specified by the director.

## 11VAC5-31-180. Inspection of premises.

Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or state lottery department representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials, equipment, or tickets are stored or kept in order to inspect the licensed premises and inspect, or if necessary remove lottery materials, equipment, or tickets ~~and the licensed premises.~~

## 11VAC5-31-190. Examination of records and equipment; seizure of records and equipment.

A. Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing and copying, and make all equipment related to his lottery activities available for inspection, as required by the director or department representatives, ~~between the hours of 8 a.m. and 5 p.m. Mondays through Fridays during the normal business hours of the licensed retailer during normal business hours of the licensed retailer.~~

B. All books, records and equipment pertaining to the licensed retailer's lottery activities may be seized with good cause by the director or department representatives without prior notice.

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

### FORMS (11VAC5-31)

~~Retailer License Application, SLD-0062 (rev. 8/97).~~

~~Retailer Location Form, SLD-0055 (rev. 3/99).~~

~~Personal Data Form, SLD-0061 (rev. 4/99).~~

~~On-Line Game Survey, SLD-0120.~~

~~Licensed Retailer Certificate (rev. 9/94).~~

~~Instant Ticket Game/Contest Product Licensing Application (rev. 7/96).~~

~~Retailer Contract (rev. 12/99).~~

~~Retailer Contract Addendum (rev. 12/00).~~

~~Authorization Agreement for Preauthorized Payments, SLD-0035A.~~

~~A/R Online Accounting Transaction Form, X-0105 (eff. 11/00).~~

~~Retailer Activity Form, SLD-0081 (rev. 2/95).~~

~~On-Line Weekly Settlement Envelope, SLD-0127.~~

~~Cash Tickets Envelope, SLD-0125.~~

~~Cancelled Tickets Envelope, SLD-0124.~~

~~Ticket Problem Report, SLD-0017 (eff. 9/92).~~

~~Weekly Settlement Form, SLD-0128 (eff. 2/89).~~

[Retailer License Application, SLD-0062 \(rev. 10/07\).](#)

[Retailer Contract \(rev. 5/10\).](#)

VA.R. Doc. No. R12-3032; Filed March 22, 2012, 2:53 p.m.

## Proposed Regulation

**Title of Regulation:** **11VAC5-41. Lottery Game Regulations (amending 11VAC5-41-10, 11VAC5-41-30 through 11VAC5-41-80, 11VAC5-41-100, 11VAC5-41-110, 11VAC5-41-130 through 11VAC5-41-210, 11VAC5-41-230, 11VAC5-41-250, 11VAC5-41-280, 11VAC5-41-310, 11VAC5-41-320; repealing 11VAC5-41-260).**

**Statutory Authority:** § 58.1-4007 of the Code of Virginia.

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

**Public Comment Deadline:** June 8, 2012.

**Agency Contact:** Mitch Belton, Contract and Project Coordinator, State Lottery Department, 900 East Main Street, 12th Floor, Richmond, VA 23219, telephone (804) 692-7136, FAX (804) 692-7325, or email mbelton@valottery.com.

**Basis:** Pursuant to § 58.1-4007 of the Code of Virginia, the State Lottery Board has the power to adopt regulations governing the establishment and operation of a lottery after consultation with the Director of the State Lottery Department.

**Purpose:** The proposed amendments will update the regulations that were last amended approximately nine years ago. Clarification of the games offered by the State Lottery Department will promote the general welfare of citizens by increasing transparency and avoiding confusion.

**Substance:** Many definitions that referred to the department's games were amended, added, or deleted to avoid potential confusion. The amendments clarify how and where claims can be validated, add flexibility as to how taxes will be calculated based on the IRS requirements at the time of payment, and extend the redemption period for a "free ticket" to 180 days.

**Issues:** The proposed amendments will enhance transparency to citizens and add additional clarification to games. The

agency does not foresee any disadvantages to the citizens and businesses of the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The State Lottery Department (department) proposes to 1) extend the time a winning ticket for which the prize is a free ticket must be claimed from 60 days to 180 days after the drawing, 2) specify that the use of electro-mechanical, electronic printing or other automated devices to play choices is allowed if they are developed by the department and that the department's website and social media may be utilized to publicize the lottery, and 3) delete language pertaining to grand prize events and include numerous other clarifications, reference updates, format changes, and removal of obsolete forms from the regulations.

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

Estimated Economic Impact. One of the proposed changes will extend the time a winning ticket for which the prize is a free ticket must be claimed from 60 days to 180 days after the drawing. Currently, all other types of winning tickets must be claimed within 180 days after the drawing. This change will make expiration date of winning tickets with free ticket prizes consistent with all other types of winning tickets, afford free ticket winners more time to claim their prizes, and potentially reduce the amount of unclaimed free ticket prizes. However, the department believes that the number of cases where a free ticket winning has not been claimed within the first 60 days after the drawing is negligible. Thus, no significant economic effect is expected from this change beyond improving the consistency between similar rules. Another proposed change will specify that the use of electro-mechanical, electronic printing or other automated devices to play choices is allowed if they are developed by the department. Current language does not specify that utilization of such devices developed by the department is allowed. The proposed changes will also specify that the department's website and social media may be utilized to publicize the lottery. Similar to the previous change, the current language does not specify the media types that may be utilized to publicize the lottery. The main effect of these two changes appears to be an improvement in the clarity of the regulatory language.

Also, the proposed changes will delete language pertaining to grand prize events.

According to the department, no grand prize events have been held in the last 4-5 years and this language is obsolete. Finally, the remaining changes include numerous other clarifications, reference updates, format changes, and removal of obsolete forms from the regulations. None of these changes are expected to create any significant economic effect other than improving the clarity and organization of the regulations.

Businesses and Entities Affected. Currently, these regulations apply to 5,191 licensed retailers and approximately 3.1 million players per year.

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

Projected Impact on Employment. No significant effect on employment is expected.

Effects on the Use and Value of Private Property. No significant effect on the use and value of private property is expected other than preserving the value of free ticket winnings not claimed within the 60 days from the date of drawing for an additional 120 days.

Small Businesses: Costs and Other Effects. While most of the licensed retailers are believed to be small businesses, no significant costs and other effects are expected as discussed above.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

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

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.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis presented by the Department of Planning and Budget and has no comment.

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## Summary:

*The proposed amendments (i) repeal the ability of merchants to provide free game tickets with the purchase of other goods or services customarily sold by the merchant; (ii) extend the time a winning ticket for which the prize is a free ticket must be claimed from 60 days to 180 days after the drawing; (iii) specify that the use of electro-mechanical, electronic printing, or other automated devices to play choices is allowed if developed by the department; (iv) allow use of the department's website and social media to publicize the lottery; (v) delete language pertaining to grand prize events; and (vi) include numerous other clarifications, reference updates, format changes, and removal of obsolete forms from the regulations.*

## 11VAC5-41-10. Definitions for lottery games.

The following words and terms when used in any of the department's regulations shall have the same meanings as defined in this chapter unless the context clearly indicates otherwise:

"Altered ticket" means a lottery ticket that has been forged, counterfeited, or tampered with in any manner.

"Barcode" means the individual coded number assigned to a lottery ticket for the purpose of electronic scanning, validation, redemption or other tracking purpose.

"Board" means the State Lottery Board established by the State Lottery Law (Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia).

"Breakage" means the money accumulated from the rounding down of the ~~parimutuel~~ pari-mutuel prize levels to the next lowest whole dollar amount.

~~"Certified drawing" means a drawing in which lottery officials and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination occurred.~~

"Cashing retailer" means a department licensed retailer that sells lottery products and is authorized to pay prizes.

"Computer gaming system" means any computer system owned, operated, or contracted by the department that supports the sale, redemption, or validation of lottery tickets or wagers.

"Coupon" is a device (electronic or paper or otherwise) that is approved by the department for redemption.

"Department" means the State Lottery Department created by State Lottery Law (Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia).

"Director" means the Director of the State Lottery Department or his designee.

"Drawing" means a formal process of randomly selecting numbers, names, or items in accordance with the specific game or promotion rules for ~~those~~ games or promotions requiring the random selection of numbers, names, or items.

"Game" means any individual or particular type of lottery authorized by the board.

"Instant game" means a game that, when played, reveals or informs the player immediately ~~whether the player has won a prize or entry into a prize drawing, or both~~ whether he has won a prize, entry into a prize drawing, prize points, or any or all of the aforementioned as specified in game rules.

"Misprinted ticket" means a lottery ticket ~~that contains a manufacturing or printing defect or play~~ that contains a manufacturing, programming, or printing defect that causes the game to no longer play as defined in game rules or does not properly validate against the game's validation files.

"Natural person" means a human being, and not a corporation, company, partnership, association, trust or other entity.

~~"On line system" means the department's on line computer system consisting of on line terminals, central processing equipment, and a communication network.~~

~~"On line terminal" or "terminal" means a device that is authorized by the department to function in an on line, interactive mode with the department's computer system for the purpose of issuing tickets or an electronic facsimile thereof, and entering, receiving and processing game related transactions.~~

~~"On line ticket" means a computer generated or electronically produced ticket on lottery stock issued by an on line lottery retailer to a player as a receipt for the number, numbers, or items or combination of numbers or items the player has selected.~~

~~"Pack" means a set quantity of consecutively numbered scratch tickets that all bear an identical pack number unique to that pack among all the tickets manufactured for that particular game.~~

"Prize" means any cash or noncash award to a holder of a winning ~~lottery game ticket~~ entry or play.

~~"Prize structure" means the percentage of sales that is dedicated to prizes~~ the number, value, and odds of winning prizes for a game and the prize tiers within a game and the chances of winning a prize in each tier in an individual game as determined by the department and as specified in the game rules.

"Probability game" means a game in which all of the tickets sold are potentially winning tickets, and the outcome of the game depends entirely upon the player's ~~scratch choice of a limited number of play spots~~ choice or choices during game play.

"Promotion" is defined as an "added value" offer to consumers or licensed retailers sanctioned by the director or approved by the board when required.

"Roll stock" or "ticket stock" means the paper roll issued or approved for use by the department ~~placed into the lottery retailer terminal~~ from which a unique lottery ticket is generated ~~by the computer, displaying~~ displaying the selected items or numbers.

"Scratch ticket" means ~~an instant game ticket with a latex or electronically produced covering over the game symbols located in the play area. Each ticket has a unique barcode, validation number and ticket number~~ a printed instant win ticket with a covering over the play area that when scratched reveals a specific result.

"Share" means a percentage of ownership in a winning ticket, play, or subscription plan.

"Terminal" means a device that is authorized by the department to function in an interactive mode with the department's computer gaming system or systems for the purpose of issuing tickets, plays, or an electronic facsimile thereof, and entering, receiving, and processing game-related transactions.

"Terminal ticket" means a computer-generated or electronically-produced ticket issued through the computer gaming system by a retailer to a player as a receipt for the number, numbers, or items or combination of numbers or items the player has selected.

"Ticket number" means the preassigned unique number or combination of letters and numbers ~~which~~ or barcode that identifies that particular ticket as one within a particular game or drawing.

"Validation" means the process of reviewing and certifying a lottery ticket to determine whether it is a winning ticket.

~~"Validation number" means the unique number or number and letter code used to determine whether a lottery ticket is a winning ticket.~~

"Validation barcode" means the unique number or number and letter code or barcode used to determine whether a lottery ticket is a winning ticket.

"Winning ticket, winning wager, or winning play" means that the ticket, wager, or play that meets the criteria and specific rules for winning prizes as published for each game by the director.

**11VAC5-41-30. Prize structure.**

~~A.~~ The prize structure for each lottery game shall be approved in advance by the board and may be adjusted in accordance with policy adopted by the board.

~~B. Prizes may be cash or noncash awards, including game tickets.~~

**11VAC5-41-40. Chances of winning.**

The director shall publicize the overall chances of winning a prize in each lottery game. The chances may be printed ~~on the ticket or contained in informational materials, or both~~ or may be in electronic form.

**11VAC5-41-50. Ticket price.**

A. The sale price of a lottery ticket for each game will be determined by the board. The ticket price shall not operate to prevent the sale of more than one lottery play on a single ticket. ~~Unless authorized by the board, lottery retailers may not discount the sale price of tickets or provide free lottery tickets as a promotion with the sale of tickets. This section shall not prevent a licensed retailer from providing free game tickets with the purchase of other goods or services customarily offered for sale at the retailer's place of business; provided, however, that such promotion shall not violate any law.~~

~~B. This section shall not apply to the redemption of a winning ticket, the prize for which is one or more free tickets. Retailers shall sell tickets at the prices fixed by the board.~~

C. This section shall not apply to the redemption of a winning ticket, the prize for which is one or more free tickets.

**11VAC5-41-60. Drawing and selling times.**

A. Drawings shall be conducted at times and places designated by the director and publicly announced by the department.

B. Retailers may sell tickets from new instant games upon receipt of the tickets from the department, but shall not sell tickets for an instant game after the announced end of that game.

C. Retailers may sell ~~on-line~~ terminal tickets up to a designated time prior to the drawing as specified in the ~~on-line~~ terminal game rules. That time will be designated by the director.

**11VAC5-41-70. Ticket Terminal ticket cancellation.**

A ticket may be canceled in accordance with the procedures contained in the rules for each game.

**11VAC5-41-80. Ticket Scratch ticket returns.**

A. Ticket sales to retailers are final. The department will not accept returned, unsold tickets for credit except as specifically authorized by and provided for in the department's ~~policy for scratch ticket returns~~ procedures.

B. Once tickets are accepted by a retailer, the department ~~will not replace mutilated or damaged tickets, or be responsible for lost, stolen or destroyed tickets, unless specifically authorized by the director.~~



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1. May hold the retailer financially responsible for the replacement of mutilated, damaged, or otherwise unaccounted for tickets.

2. Will not be responsible for lost, stolen, destroyed, or otherwise unaccounted for tickets, unless specifically authorized and provided for in the department's procedures.

## 11VAC5-41-100. Validation requirements.

~~A. To receive payment for a prize, a Virginia lottery game ticket or play shall be validated by the retailer or the department as set out in this chapter and in any other manner that the director may prescribe in the specific rules for the lottery game, which shall include but not be limited to the following:~~

~~1. The original ticket must be presented for validation;~~

~~2. The ticket validation number shall be present in its entirety;~~

~~3. The ticket shall not be mutilated, altered, or tampered with in any manner. If a ticket is partially mutilated or if the ticket is not intact and cannot be validated through normal procedures but can still be validated by other validation tests, the director may pay the prize for that ticket;~~

~~4. The ticket shall not be counterfeited, forged, fraudulently made or a duplicate of another winning ticket;~~

~~5. The ticket shall have been issued by the department or by a licensed lottery retailer in an authorized manner;~~

~~6. The ticket shall not have been cancelled or previously paid;~~

~~7. The ticket shall be validated in accordance with procedures for claiming and paying prizes as set out in the game rules;~~

~~8. The ticket data shall have been recorded in the central computer system before the on-line game drawing or the instant game ticket sale, and the ticket data shall match this computer record in every respect;~~

~~9. The ticket may not be misregistered or defectively printed to an extent that it cannot be processed by the department; and~~

~~10. The ticket shall pass all other confidential security checks of the department.~~

1. If the game's rules specify that the physical ticket must be presented for validation then:

a. The original ticket must be presented for validation;

b. The ticket shall not be mutilated, altered, or tampered with in any manner. If a ticket is partially mutilated or if the ticket is not intact and cannot be validated through

normal procedures but can still be validated by other validation tests, the director may pay the prize for that ticket;

c. The ticket may not be misregistered or defectively printed to an extent that it cannot be processed by the department;

d. The ticket shall pass all other confidential security checks of the department;

e. The ticket validation number shall be present in its entirety; and

f. The ticket shall not be counterfeited, forged, fraudulently made, or a duplicate of another winning ticket.

2. Where a winning ticket or play has been issued by a terminal:

a. The ticket or play shall have been issued by the department or by a licensed lottery retailer in an authorized manner;

b. The terminal ticket or play shall not have been cancelled or previously paid;

c. The terminal ticket or play shall be validated in accordance with procedures for claiming and paying prizes as set out in the game rules; and

d. The terminal ticket or play data shall have been recorded in the computer gaming system before the drawing or the instant game ticket sale, and the ticket data shall match this computer record in every respect.

3. If the games rules specify that a physical ticket, play, or record of play is not required for validation there may be other lottery requirements, as defined by the director, for winners to collect prizes.

~~B. Any lottery cash prize or free ticket (at its equivalent value) resulting from a ticket that is purchased or claimed by a person ineligible to play the lottery game is invalid and reverts to the State Lottery Fund.~~

## 11VAC5-41-110. Use of playslips.

A. A playslip issued by the department may be used to select a player's number or numbers to be played in an on-line game. If a playslip is used to select the player's number or numbers for an on-line game, the playslip number selections shall be manually marked and not marked by any electro-mechanical, electronic printing or other automated device. choice or choices to be played in a department-authorized computer gaming system. If a playslip is used to select the player's choice or choices for use in a computer gaming system, the playslip selections shall be manually or electronically marked as authorized by the department's game rules and not marked by any electro-mechanical, electronic

printing, or other automated device, except for play utilizing materials or systems developed by the department.

B. Any playslip marked by methods other than those authorized by this chapter is invalid and subject to seizure by the department if presented for play at any lottery terminal. Any tickets produced from the use of invalid playslips are also invalid and subject to seizure by the department.

C. Nothing in this chapter shall be deemed to prevent a person with a physical handicap who is unable to mark a playslip manually from using any device intended to permit such person to make such a mark for his sole personal use or benefit.

**11VAC5-41-130. ~~Winning~~ Terminal-generated winning tickets.**

A. When more than one ticket containing the winning numbers is issued for the same drawing of the same game, the holder of each ticket is entitled only to his share of the prize, regardless of whether the other holders of tickets with the winning numbers actually claim their share of the prize.

B. The department shall not redeem prizes for tickets that would have been winning tickets but for the fact that they have been cancelled by the retailer unless specifically authorized by the director.

C. When the department's internal controls indicate that a winning ticket was issued but no claim is made for the prize, there shall be a rebuttable presumption that such ticket was in fact issued and the prize shall be paid in accordance with the provisions of § 58.1-4020 of the Code of Virginia and regulations of the department.

**11VAC5-41-140. Where prizes claimed.**

Winners may claim game prizes ~~from any licensed lottery retailer or from the department in the manner as~~ specified in this chapter or in the game rules, including:

1. At department headquarters;
2. At a department customer service center;
3. From a cashing retailer;
4. By mail; or
5. At any other location specifically authorized by the department.

**11VAC5-41-150. Retailers' prize payment procedures.**

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, money order, other cash equivalent or by any combination of these methods.
2. If a check for payment of a prize by a retailer to a claimant is denied for any reason, the retailer is subject to the same service charge, interest and penalty payments for

referring a debt to the department for collection that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.

3. ~~During normal business hours of the lottery retailer when the validation equipment is operational and with operational validation equipment by which~~ the ticket claim can be validated, a lottery retailer shall pay any lottery prize of ~~\$601~~ \$600 or less, unless otherwise determined by the director, regardless of the location from which the winning ticket was purchased.

4. A prize claim shall be paid only at the location specified on the retailer's license or at a lottery office.

5. The department will reimburse a retailer for all valid prizes paid by the retailer within the specified prize redemption period for the game from which the prize resulted.

6. In no case shall a retailer impose a fee, additional charge or discount for cashing a winning lottery game ticket.

7. Retailers who pay claims without validating the tickets do so at their own financial risk.

~~8. Federal Internal Revenue Code, 26 USC § 6050I requires lottery retailers who receive more than \$10,000 in cash in one transaction or two or more related transactions in the aggregate, from a single player or his agent, to file a return or such information with the Internal Revenue Service (IRS). The IRS encourages retailers to report all suspicious transactions, even if they do not meet the \$10,000 threshold. For purposes of this requirement only, "cash" includes coin and currency only and does not include bank checks or drafts, traveler's checks, wire transfers, or other negotiable or monetary instruments.~~

**11VAC5-41-160. No reimbursement for retailer errors.**

Unless otherwise determined by the director, the department shall not reimburse retailers for prize claims a retailer has paid in error or for which a retailer failed to properly and completely validate the lottery game tickets in accordance with department procedures.

**11VAC5-41-170. When prize shall be claimed from the department.**

A. The department will pay prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall present the original signed ticket to any department office including the department's headquarters or mail the signed ticket to the department's headquarters;
2. If a ticket holder is unable to return to any retailer to claim a prize that the retailer otherwise would pay, the

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ticket holder may present the original signed ticket at any department office or mail the signed ticket to the department's headquarters; ~~or~~

3. If the prize amount is more than ~~\$601~~ \$600, the ticket holder may present the original signed ticket at any department office or mail the signed ticket to the department headquarters; or

4. Where an electronic entry or an electronic record of a ticket is permitted, a presentation of a physical ticket may not be required to claim a prize.

B. The department may require a claim form.

C. A player shall bear all risk of loss or damage by sending the ticket through the mail.

## **11VAC5-41-180. Department action on claims for prizes submitted to department.**

A. The department shall validate the winning ticket claim according to procedures contained in this chapter.

B. If the claim cannot be validated, the department will promptly notify the ticket holder.

C. If the claim is mailed to the department and the department validates the claim, a check for the prize amount, merchandise, or experiential prizes will be presented or mailed to the winner.

D. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount, merchandise, or experiential prizes will be presented to the winner.

## **11VAC5-41-190. Withholding, notification of prize payments.**

A. When paying any prize in excess of ~~\$601 or more~~ \$600, the department shall:

1. File the appropriate income reporting forms with the Virginia Department of Taxation and the federal Internal Revenue Service; and

2. Withhold federal and state taxes from any winning ticket in excess of \$5,001 accordance with the tax regulation in effect at the time.

B. Additionally, when paying any cash prize of \$100 or more, the department shall withhold any moneys due for delinquent debts as provided by the Commonwealth's Setoff Debt Collection Act, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia.

## **11VAC5-41-200. Ticket is bearer instrument.**

A ticket that has been legally issued by a licensed lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket or enters through an

electronic validation process is considered the owner of the ticket.

## **11VAC5-41-210. Payment made to bearer.**

Payment of any prize will be made to the bearer of a validated winning ticket for that prize upon submission of ~~the ticket and a prize claim form, if one is required, unless otherwise delayed in accordance with this chapter.~~ If a validated winning ticket has been signed, the bearer may be required to present proper identification. one or more of the following, as required by the game rules:

1. The ticket.

2. Validation information.

3. Prize claim form, unless otherwise delayed in accordance with this chapter.

4. The bearer may be required to present proper identification.

## **11VAC5-41-230. Delay of payment allowed.**

A. ~~The~~ Subject to the provisions in § 58.1-4013 D of the Code of Virginia, the director may refrain from making payment of a prize pending a final determination by the director under any of the following circumstances:

1. If a dispute arises, or it appears that a dispute may arise, relative to any ownership of a winning ticket or any prize;

2. If there is any question regarding the identity of the claimant;

3. If there is any question regarding the validity of any ticket presented for payment;

4. If there is any question whether a claimant has made a valid cash option election; or

5. If the claim is subject to any set off for delinquent debts owed to any agency eligible to participate in the Setoff Debt Collection Act (Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia) if the agency has registered such debt with the Virginia Department of Taxation and timely notice of the debt has been furnished by the Virginia Department of Taxation to the department.

B. The director may, at any time, delay any periodic or installment payment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed installments shall be brought up to date immediately upon the director's confirmation. Delayed installments shall continue to be paid according to the original payment schedule after the director's decision is given.

C. No liability for interest for any delay of any prize payment in accordance with subsections A and B, or any

delay beyond the department's control, shall accrue to the benefit of the claimant pending payment of the claim. The department is neither liable for nor has it any responsibility to resolve disputes between or among competing claimants.

**11VAC5-41-250. Using winners' names and information.**

~~The department may require prize winners to participate in press conferences and to use the names and photographs of such prize winners and the city, town or county in which they live, as well as the prize amounts won for public information purposes and to foster the integrity of the games. No consideration shall be paid by the department for this purpose, unless authorized by the director. The department can use a winner's name and the city, town, or county in which a winner lives, as well as the prizes won, for public information purposes and to foster the integrity of the games. The department may require prize winners to participate in news conferences. The department can use the winner's information described in this section and winner's photographs for public information or promotional purposes in mediums such as, but not limited to, the department's website ([www.valottery.com](http://www.valottery.com)), social media, in-store, television, Internet, and radio. No consideration shall be paid by the department for this purpose.~~

**11VAC5-41-260. Grand prize event. (Repealed.)**

~~If a lottery game includes a grand prize event, the following general criteria shall be used:~~

- ~~1. Entrants in the event shall be selected from tickets that meet the criteria stated in specific game rules set by the director;~~
- ~~2. Participation in the drawings shall be limited to those tickets that are actually purchased by the entrants on or before the date announced by the director;~~
- ~~3. If, after the event is held, the director determines that a ticket should have been entered in the event, the director may place that ticket into a grand prize drawing for the next equivalent event, which action shall be the extent of the department's liability; and~~
- ~~4. The director shall determine the dates, times and procedures for selecting grand prize winners for each on-line game, and the proceedings for selection of the winners shall be open to the public.~~

**11VAC5-41-280. When prize payable for "life."**

If a prize is advertised as payable for the life of the winner, unless there is a cash option available selected by the winner or winners at the time a claim is made, the prize will be payable in installments, as provided by specific game rules in accordance with the rules for the specific game, for the lifetime of the winner and will cease upon the death of the winner. When the prize is won by two or more persons on a

single ticket, each winner's share of the prize shall expire upon his death, unless otherwise specified in the game rules.

**11VAC5-41-310. Lost, stolen, or destroyed tickets.**

The department is not liable for lost, stolen, or destroyed tickets. The director may honor a prize claim of an apparent winner who does not possess the original ticket if the claimant is in possession of information that demonstrates that the original ticket meets the following criteria and can be validated through other means. Such information may include, but is not limited to, the following:

1. The claim form, if required, and a photocopy of the ticket, or photocopy of the original claim form, if required, and ticket, are timely filed with the department;
2. The prize for which the claim is filed is a winning prize that has not been claimed ~~within the required redemption period~~, as verified in the department's records. ~~In no case will the claim be paid within the redemption period; and~~
3. The claim is filed within the redemption period, as established by the game rules; and
4. Except in extenuating circumstances or for just cause as the director may deem appropriate, the redemption period for claims has expired.

**11VAC5-41-320. Unclaimed prizes.**

A. Except for a free ticket prize, a claim for a lottery game winning ticket must be mailed in an envelope bearing a postmark of the United States Postal Service or another sovereign nation or received for payment as prescribed in this chapter within either 180 days after the date of the drawing for which the ticket was purchased, or of the event which caused the ticket to be a winning entry, or, in the case of an instant game ticket, within 180 days after the announced end of the game. In the event that the 180th day falls on a Saturday, Sunday or legal holiday, the winning ticket will be accepted for validation on the next business day only at a lottery office.

B. Any lottery cash prize that remains unclaimed after either 180 days following the drawing that determined the prize or 180 days after the announced end of the instant game shall revert to the State Literary Fund. Cash prizes do not include free ticket prizes or other noncash prizes such as merchandise, vacations, admission to events and the like.

C. All claims for ~~on-line terminal~~ game winning tickets for which the prize is a free ticket must be mailed in an envelope bearing a postmark of the United States Postal Service or another sovereign nation or received for redemption as prescribed in this chapter within ~~60~~ 180 days after the date of the drawing for which the ticket was purchased. In the event the ~~sixtieth~~ 180th day falls on a Saturday, Sunday, or legal holiday, a claimant may only redeem his winning ticket for a

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free ticket at ~~an on-line lottery~~ a cashing retailer on or before the ~~sixtieth~~ 180th day.

[Split Ownership/Proceeds Verification Form \(rev. 2/10\).](#)

VA.R. Doc. No. R12-3033; Filed March 22, 2012, 2:54 p.m.

Except for claims for free ticket prizes mailed to lottery headquarters and postmarked on or before the ~~sixtieth~~ 180th day, claims for such prizes will not be accepted at any lottery office after the sixtieth day. This section does not apply to the redemption of free tickets awarded through the subscription program.

D. Any instant game winning ticket of \$25 or less that has been purchased, but that is not claimed within 180 days after the announced end of the instant game, shall revert to the State Lottery Fund.

E. In case of a prize payable over time, if such prize is shared by two or more winning tickets, one or more of which is not presented to the department for payment within the prize redemption period as established by the game rules, the department will transfer that portion of the prize to the Literary Fund in accordance with procedures approved by the State Treasurer.

F. In accordance with the provisions of the ~~Soldiers' and Sailors' Civil Relief Act~~ Servicemembers Civil Relief Act of 1940 (50 ~~USCA Appx~~ USC App § ~~525~~ 526), any person while in active military service may claim exemption from the 180-day ticket redemption requirement. Such person, however, must claim his winning ticket or share as soon as practicable, and in no event later than 180 days after discharge from active military service.

**NOTICE:** The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

## FORMS (11VAC5-41)

~~Pick 3 Playslip (3/01).~~

~~Pick 4 Playslip (3/01).~~

~~Cash 5 Playslip (2/99).~~

~~Lotto South Playslip (7/01).~~

~~Mega Millions Playslip (2/02).~~

~~Winner Claim Form, SLD 0007 (rev. 7/97).~~

~~Agreement to Share Ownership and Proceeds of Lottery Ticket.~~

~~Lotto South and Mega Millions Payout Election Form (5/02).~~

~~Prizewinner Designation of Beneficiary(ies).~~

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# GENERAL NOTICES/ERRATA

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## CRIMINAL JUSTICE SERVICES BOARD

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Criminal Justice Services is conducting a periodic review of 6VAC20-90, Rules Relating to Regional Criminal Justice Training Academies.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins April 9, 2012, and ends on April 30, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Stephanie L. Morton, Law Enforcement Program Specialist, Criminal Justice Services Board, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410, or email [stephanie.morton@dcjs.virginia.gov](mailto:stephanie.morton@dcjs.virginia.gov).

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Restore Water Quality in South Fork Reed Creek, Mill Creek, Stony Fork, Tate Run, Reed Creek, Miller Creek, and Cove Creek in Wythe County

Announcement of an effort to restore water quality in the following tributaries of the New River: South Fork Reed Creek, Mill Creek, Stony Fork, Tate Run, Reed Creek, Miller Creek, and Cove Creek in Wythe County, Virginia.

Public meeting location: Wythe Bland Conference Room, Wythe County Community Hospital, 600 West Ridge Road, Wytheville, VA, on April 19, 2012, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation are announcing the final study report to restore water quality, a public comment opportunity, and public meeting.

Meeting description: Final public meeting on a study to restore water quality and first meeting to develop an implementation plan.

Description of study: DEQ has been working to identify sources of bacterial contamination in South Fork Reed Creek, Mill Creek, Stony Fork, Tate Run, Reed Creek, Miller Creek, and Cove Creek in Wythe County, Virginia. The streams are impaired for failure to meet the recreational use because of fecal coliform bacteria violations and violations of the E. coli standard.

During the study, the sources of bacterial contamination have been identified and total maximum daily load (TMDL) developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, April 19, 2012, to May 18, 2012. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available for the impaired waters from the contacts below or on the DEQ website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

Contact for additional information: Martha Chapman, TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4800, FAX (276) 676-4899, or email [martha.chapman@deq.virginia.gov](mailto:martha.chapman@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 March 19, 2012. 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.



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## General Notices/Errata

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### Director's Order Number Thirteen (12)

Virginia's Instant Game Lottery 1253; "Million Dollar Cash Bonanza" Final Rules for Game Operation (effective March 16, 2012)

### Director's Order Number Fourteen (12)

Virginia's Instant Game Lottery 1306; "\$100,000 Cash Cyclone" Final Rules for Game Operation (effective March 16, 2012)

### Director's Order Number Twenty-Four (12)

Virginia's Instant Game Lottery 1317; "Cherry Twist/Orange Twist/Lemon Twist" Final Rules for Game Operation (effective March 16, 2012)

### Director's Order Number Twenty-Five (12)

Virginia's Instant Game Lottery 1336; "Grills Gone Wild" Final Rules for Game Operation (effective March 16, 2012)

### Director's Order Number Twenty-Seven (12)

Virginia's Instant Game Lottery 1322; "The Money Game" Final Rules for Game Operation (effective March 16, 2012)

### Director's Order Number Twenty-Nine (12)

Virginia's Instant Game Lottery 1330; "\$150,000 Player's Club" Final Rules for Game Operation (effective March 16, 2012)

### Director's Order Number Thirty-Three (12)

Virginia's Instant Game Lottery 1303; "More Folding Money" Final Rules for Game Operation (effective March 16, 2012)

### Director's Order Number Thirty-Four (12)

Virginia's Instant Game Lottery 1320; "Queen of Hearts" Final Rules for Game Operation (effective March 16, 2012)

### Director's Order Number Thirty-Five (12)

Virginia's Instant Game Lottery 1327; "Red Hot Slots" Final Rules for Game Operation (effective March 16, 2012)

### Director's Order Number Thirty-Six (12)

Virginia's Instant Game Lottery 1341; "Money Jar" Final Rules for Game Operation (effective March 16, 2012)

## STATE BOARD OF SOCIAL SERVICES

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services is conducting a periodic review of the following regulations:

22VAC40-90, Regulation for Criminal Record Checks for Homes for Adults and Adult Day Care Centers.

22VAC40-191, Background Checks for Child Welfare Agencies.

The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether each regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins April 9, 2012, and ends on April 30, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to Karen Cullen, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7152, FAX (804) 726-7132, or email [karen.cullen@dss.virginia.gov](mailto:karen.cullen@dss.virginia.gov). Comments must include the commenter's name and address (physical or email) information to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review for each regulation will be posted on the Town Hall and published in the Virginia Register of Regulations.

## STATE WATER CONTROL BOARD

### Proposed Consent Order for Warren E. Beery

An enforcement action has been proposed for Warren E. Beery for violations in Rockingham County. A proposed consent order describes a settlement to resolve unpermitted stream work violations in Dry River. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Steven W. Hetrick will accept comments by email at [steven.hetrick@deq.virginia.gov](mailto:steven.hetrick@deq.virginia.gov), FAX (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from April 9, 2012, to May 9, 2012.

### Proposed Consent Special Order for the City of Martinsville

An enforcement action has been proposed for the City of Martinsville for violations at the City of Martinsville Water

Treatment Plant. The special order by consent will address and resolve violations of environmental law and 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](http://www.deq.virginia.gov). Jerry Ford, Jr. will accept comments by email at [jerry.ford@deq.virginia.gov](mailto:jerry.ford@deq.virginia.gov), or postal mail Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from April 10, 2012, to May 9, 2012.

**Notice of Intent to Provide § 401 Water Quality Certification of U.S. Army Corps of Engineers Nationwide Permits and Norfolk District Regional Conditions**

Pursuant to the Virginia Water Protection Permit Program Regulation (9VAC25-210), the State Water Control Board (board) is giving notice of its intent to provide § 401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE) Nationwide Permits (NWP) and Norfolk District Regional Conditions after considering public comment for a 30-day period starting March 15, 2012. These NWPs were published in Part II of the Federal Register, 77 FR 10184 (February 21, 2012), with an effective date of March 19, 2012. The Norfolk District Regional Conditions were public noticed on March 11, 2011, and are subsequently under amendment with a public notice anticipated on or around March 16, 2012. The board can only issue final § 401 Certification of a nationwide or regional USACE permit if the permit meets the requirements of the Virginia Water Program Permit Regulation and after advertising and accepting public comment for 30 days on its intent to provide certification.

The State Water Control Board will issue its final § 401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE) Nationwide Permits (NWP) and Norfolk District Regional Conditions at the end of the 30-day comment period and after any comments received are considered. The details of the board's preliminary decision are below. Written comments, including those by email, must be received no later than 4 p.m. on April 13, 2012, and should be submitted to David L. Davis at the address in the contact information section at the end of this notice. Only those comments received within this period will be considered by the board. Written comments shall include the name, address, and telephone number of the writer and shall contain a complete, concise statement of the factual basis for comments.

State Water Control Board  
Preliminary Decision on § 401 Water Quality Certification of  
United States Army Corps of Engineers Nationwide Permits  
And Norfolk District Regional Conditions

The U.S. Army Corps of Engineers (USACE) Nationwide Permits (NWP) were published in Part II of the Federal

Register on February 21, 2012, with an effective date of March 19, 2012.

The State Water Control Board tentatively provides unconditional § 401 Water Quality Certification for all of the Norfolk District Regional Conditions and for the following Nationwide Permits as meeting the requirements of the Virginia Water Protection Permit Regulation, which serves as the Commonwealth's § 401 Water Quality Certification:

- NWP 1: Aids to Navigation
- NWP 2: Structures in Artificial Canals
- NWP 3: Maintenance
- NWP 4: Fish & Wildlife Harvesting, Enhancement, & Attraction Devices & Activities
- NWP 5: Scientific Measurement Devices
- NWP 6: Survey Activities
- NWP 8: Oil and Gas Structures
- NWP 9: Structures in Fleeting and Anchorage Areas
- NWP 10: Mooring Buoys
- NWP 11: Temporary Recreational Structures
- NWP 13: Bank Stabilization
- NWP 15: U.S. Coast Guard Approved Bridges
- NWP 20: Oil Spill Cleanup
- NWP 22: Removal of Vessels
- NWP 23: Approved Categorical Exclusions
- NWP 28: Modifications of Existing Marinas
- NWP 30: Moist Soil Management for Wildlife
- NWP 31: Maintenance of Existing Flood Control Facilities
- NWP 33: Temporary Construction, Access and Dewatering
- NWP 34: Cranberry Production Activities
- NWP 35: Maintenance Dredging of Existing Basins
- NWP 36: Boat Ramps
- NWP 38: Cleanup of Hazardous and Toxic Waste
- NWP 45: Repair of Uplands Damaged by Discrete Events
- NWP 46: Discharges Into Ditches
- NWP 49: Coal Re-mining Activities
- NWP 50: Underground Coal Mining Activities

Unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs, the State Water Control Board hereby tentatively provides § 401 Water Quality Certification for the following Nationwide Permits as meeting the requirements of the Virginia Water Protection Permit Regulation, which serves as the Commonwealth's § 401 Water Quality Certification provided that any compensatory mitigation meets the requirements in the Code of Virginia, § 62.1-44.15:23 A through C:

- NWP 14: Linear Transportation Projects
- NWP 21: Surface Coal Mining Activities
- NWP 29: Residential Developments (Single Family Dwelling Only)

The State Water Control Board hereby tentatively provides conditional § 401 Water Quality Certification for the following Nationwide Permits provided that any



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## General Notices/Errata

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compensatory mitigation meets the requirements in the Code of Virginia, § 62.1-44.15:23 A through C and as detailed below:

NWP 7: Outfall Structures and Maintenance, provided that the structure or maintenance is not associated with intake structures

NWP 12: Utility Line Activities, provided that the activities are not associated with intake structures or do not transport non-potable raw surface water

NWP 16: Return Water from Upland Contained Disposal Areas, provided that the associated dredging does not otherwise require issuance of an Individual or General Virginia Water Protection Permit from VDEQ

NWP 18: Minor Discharges, provided that: (i) the discharge does not include water withdrawals, such as the construction of an intake structure, weir, or water diversion structure; and (ii) a Virginia Pollutant Discharge Elimination System (VPDES) permit is obtained prior to the placement of any alternative septic system discharging into Virginia Department of Health (VDH) designated shellfish waters

NWP 19: Minor Dredging, provided that dredging is not used to create a deep space for water withdrawal

NWP 25: Structural Discharges, provided that the discharge does not include structures such as pilings to construct a platform to mount a pump for water withdrawals

NWP 27: Stream and Wetland Restoration Activities, provided that: (i) when used to permit a wetland mitigation bank, compensation for any surface water impacts is debited from the bank credits; (ii) natural stream design shall be used for stream restoration projects; (iii) monitoring for success of these sites shall be conducted including submittal of as-built plans, surveys, and photographs; and (iv) dam removal for those dams meeting the following limits: a) less than 25 feet in height with a maximum impoundment capacity of less than 15 acre-feet, b) less than six feet in height with a maximum impounding capacity less than 50 acre-feet, or c) dams operated primarily for agricultural purposes which are less than 25 feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet

NWP 32: Completed Enforcement Actions, provided that the impact does not exceed 2 acres of wetlands or 1500 linear feet of streambed and only past unauthorized impacts are addressed

NWP 40: Agricultural Activities, except for the location of concentrated animal feeding operations or waste storage facilities in surface waters or activities associated with intake structures or impoundments in surface waters

NWP 41: Reshaping Drainage Ditches, provided the impact does not exceed 2 acres of wetlands or 1500 linear feet of streambed

NWP 42: Recreational Facilities, provided that: (i) the facility does not include an impoundment for irrigation;

and (ii) compensation is required for wetland and/or stream loss due to direct impacts and permanent back flooding

NWP 43: Stormwater Management Facilities, provided that the facility is not associated with a water withdrawal

NWP 44: Mining Activities, provided that the activity is not for hydraulic dredging

NWP 48: Commercial Shellfish Aquaculture Activities, provided that the activity complies with the conditions of any VPDES permit issued for the facility, and provided that the associated activities do not include a surface water withdrawal or diversion

NWP 51: Land Based Renewable Energy Generation Facilities, provided that: (i) the discharge does not include water withdrawals, such as the construction of an intake structure, weir or water diversion structure; and (ii) the impact does not exceed 2 acres of wetlands or 1500 linear feet of streambed

NWP 52: Water-Based Renewable Energy Generation Pilot Projects, provided that: (i) the discharge does not include water withdrawals, such as the construction of an intake structure, weir or water diversion structure; and (ii) the impact does not exceed 2 acres of wetlands or 1500 linear feet of streambed

The following Nationwide Permit is not currently applicable in the Commonwealth and therefore does not require § 401 Certification:

NWP 24: Indian Tribe or State Administered Section 404 Programs

The State Water Control Board denies § 401 Water Quality Certification for the following Nationwide Permits, as these types of projects require individual review under state laws:

NWP 17: Hydropower Projects

As to the exceptions for activities that would otherwise qualify for one of these Nationwide Permits, the state will continue to process applications for individual § 401 Certification through a Virginia Water Protection General or Individual Permit pursuant to 9VAC25-210. To accomplish the state's goal of individual review of certain activities, the Commonwealth is requesting that the Corps forward to the Department of Environmental Quality pre-construction notifications for any activities that fall into an excepted category.

Pursuant to the Virginia Water Protection Permit Regulation (see 9VAC25-210-130), the State Water Control Board can only issue final § 401 Certification of a nationwide or regional USACE permit if the permit meets the requirements of the VWP regulation and after advertising and accepting public comment for 30 days on its intent to provide certification. The State Water Control Board will issue its final § 401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE)

Nationwide Permits (NWP) and Norfolk District Regional Conditions at the end of that period and after any comments received are considered.

Contact Information: David L. Davis, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, FAX (804) 698-4032, or email [dave.davis@deq.virginia.gov](mailto:dave.davis@deq.virginia.gov).

### VIRGINIA CODE COMMISSION

#### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/cumultab.htm>.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

