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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **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; **Gregory D. Habeeb**; **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.

PUBLICATION SCHEDULE AND DEADLINES

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

June 2012 through July 2013

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 (Tuesday)	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012 (Tuesday)	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013
29:12	January 23, 2013	February 11, 2013
29:13	February 6, 2013	February 25, 2013
29:14	February 20, 2013	March 11, 2013
29:150	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013
29:18	April 17, 2013	May 6, 2013
29:19	May 1, 2013	May 20, 2013
29:20	May 15, 2013	June 3, 2013
29:21	May 29, 2013	June 17, 2013
29:22	June 12, 2013	July 1, 2013
29:23	June 26, 2013	July 15, 2013
29:24	July 10, 2013	July 29, 2013

*Filing deadlines are Wednesdays unless otherwise specified.

REGULATIONS

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

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.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

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.

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

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

Effective Date: Effective upon the filing of the notice of the U.S. Attorney General's preclearance with the Registrar of Regulations.

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

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 May 10, 2012, 11:37 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Fast-Track Regulation

Title of Regulation: **4VAC25-90. Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines (amending 4VAC25-90-60).**

Statutory Authority: §§ 45.1-161.3, 45.1-161.106, and 45.1-161.206 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 4, 2012.

Effective Date: July 19, 2012.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

Basis: Sections 45.1-161.3 (4) and 45.1-161.106 A of the Code of Virginia authorize the Chief of the Department of Mines, Minerals and Energy's Division of Mines, in consultation with the Coal Mine Safety Board, to promulgate regulations to ensure safe and healthy working conditions in underground mines in the Commonwealth. Also, § 45.1-161.206 of the Code of Virginia specifically directs the chief to promulgate regulations necessary to govern the use of diesel powered equipment in underground coal mines.

Purpose: The amended regulation is necessary to clarify the language. It is also necessary to improve the efficiency of the approval process. Tests conducted by the Mine Safety and Health Administration are done in a closed, laboratory environment and provide little assistance to the Chief of the Division of Mines in determining whether to approve equipment. By streamlining the process by which diesel equipment is approved and tested to be used in underground

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mines, the safety of coal miners and the public at large will be enhanced.

Rationale for Using Fast-Track Process: This rulemaking is expected to be noncontroversial as it does not represent a substantive change to the regulation. The amendments are to clarify language and enhance the existing process.

Substance: One sentence is stricken for the sake of clarity. The phrase "based on MSHA approval data" is deleted because that data is produced in a closed environment and does not accurately reflect the real world conditions underground where diesel equipment is used.

Issues: The primary advantages to this action are a clearly written regulation and a more efficient process by which diesel powered equipment is approved for use in underground mines in the Commonwealth. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Mines, Minerals and Energy proposes to delete the language requiring the use of the Mine Safety and Health Administrations engine approval data in establishing the baseline of diesel exhaust emissions in underground coal mines.

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

Estimated Economic Impact. These regulations establish emission testing and evaluation requirements for diesel engines used in underground coal mines.

The proposed changes will delete the current language requiring the use of the Mine Safety and Health Administrations engine approval data in establishing the baseline of diesel exhaust emissions in underground coal mines. This data is currently required to be used in combination with the average of the first four undiluted exhaust emission tests. With the proposed change, baseline emissions will be required to be based solely on the average of the first four undiluted exhaust emission tests. According to the Department of Mines, Minerals and Energy (DMME), the Mine Safety and Health Administrations data is not used in practice to establish baseline emissions because it is produced in a laboratory environment which does not accurately reflect the real world conditions underground where diesel equipment is used. Since deletion of this language will have no impact on the way baseline emissions are currently established, no significant economic impact is expected other than improving the clarity of the regulations and possibly streamlining the approval process by eliminating potentially confusing language.

Businesses and Entities Affected. These regulations apply to approximately 36 operators of 65 underground coal mines in Virginia.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth. However, according to DMME, coal mines are located exclusively in the counties of Buchanan, Tazewell, Wise, Lee, Dickenson, and Russell.

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. No costs or other significant impact on small businesses are expected. The proposed changes do not impose any costs on regulated entities. Also, of the regulated 36 operators, DMME believes only a few, if any, are small businesses due to increased consolidation in the mining industry. Finally, other effects of the proposed changes are not expected to be significant.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations do not impose any adverse impacts 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 107 (09). 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 Department of Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

The amendment removes the requirement that the Mine Safety and Health Administration engine approval data be used in establishing the baseline of diesel exhaust emissions in underground coal mines.

4VAC25-90-60. Emission testing and evaluation.

Undiluted exhaust emissions of diesel engines, to include each side of a dual exhaust system, on diesel-powered equipment used in underground coal mines shall be tested and evaluated weekly by an authorized person. The mine operator shall develop and implement effective written procedures for such testing and evaluation that shall include the following:

1. The method for which a repeatable load test is conducted that must include an engine RPM reading;
2. Sampling and analytical methods used to measure diesel engine emission concentrations;
3. Instrumentation and calibration of instrumentation capable of accurately detecting carbon monoxide in the expected concentrations;
4. The method of evaluation and interpretation of sampling results;
5. ~~The concentration or changes in concentration of carbon monoxide that will indicate a change in engine performance and an action plan to address changes in performance.~~ The operator will establish a baseline level of diesel exhaust emissions, subject to approval by the chief based upon ~~the MSHA engine approval data and~~ the average of the first four undiluted exhaust emission tests required by this section. This ~~plan procedure~~ will establish an action level not to exceed the lesser of two times the baseline or 2500 parts per million (ppm) of carbon monoxide. Should the action level be exceeded, the machine shall be removed from service and engine performance improved.
6. The maintenance of records necessary to track engine performance. These records shall be:
 - a. Recorded in a secure book that is not susceptible to alteration, or recorded electronically in a computer system that is secure and not susceptible to alteration; and
 - b. Retained at a surface location at the mine for at least one year and made available for inspection by interested persons.

VA.R. Doc. No. R12-2929; Filed May 2, 2012, 3:24 p.m.

Fast-Track Regulation

Title of Regulation: 4VAC25-145. Regulations on the Eligibility of Certain Mining Operators to Perform Reclamation Projects (amending 4VAC25-145-10 through 4VAC25-145-40).

Statutory Authority: §§ 45.1-161.3 and 45.1-261.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 4, 2012.

Effective Date: July 19, 2012.

Agency Contact: Michael Skiffington, Program Support Manager, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3212, FAX (804) 692-3237, or email mike.skiffington@dmme.virginia.gov.

Basis: The Department of Mines, Minerals and Energy is authorized to promulgate regulations necessary to the performance of its duties under § 45.1-161.3 of the Code of Virginia. Section 45.1-261.1 of the Code of Virginia mandates the Director of Department of Mines, Minerals and Energy to promulgate regulations to implement the process by which operators can perform reclamation work in the Commonwealth.

Purpose: This regulatory action is the result of a periodic review of the regulation. The amendments to the regulation are necessary to ensure it remains easily understandable for operators and the general public. The regulation is required by statute. Public health and safety will be protected by clarifying the requirements operators must meet in order to provide reclamation services in the Commonwealth. Poorly reclaimed sites are a public safety concern and this action will help ensure sites are reclaimed properly.

Rationale for Using Fast-Track Process: This rulemaking should be noncontroversial because no substantive changes are proposed. Technical changes are proposed to ensure the references made in the regulation are up to date and to ensure the regulation remains clearly written.

Substance: There are no substantive changes to the regulation, only technical ones.

Issues: The primary advantage to this regulation would be ensuring the regulation is technically correct and easy to understand for operators and the general public. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Mines, Minerals and Energy (Department) proposes to add clarifying language, update citations, and repeal obsolete language.

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

Estimated Economic Impact. The proposed addition of clarifying language, updating of citations, and repealing of

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obsolete language will not change requirements, rules, or opportunities and thus will produce no new cost. The proposed changes may improve the public's understanding of the existing requirements, rules, and opportunities and thus will likely be beneficial to that extent.

Businesses and Entities Affected. There are approximately 29 licensed non-underground coal mine operators in the Commonwealth.¹ The Department estimates that fewer than five of these operators have any potential interest in reclamation projects and thus would be affected by these regulations.

Localities Particularly Affected. Coal mining in the Commonwealth primarily occurs in the following seven counties: Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise.

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

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

Small Businesses: Costs and Other Effects. The proposed amendments will not increase costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not increase costs for small businesses.

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

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

or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

¹ Data source: Department of Mines, Minerals and Energy

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

Summary:

The amendments add clarifying language, update citations, and repeal obsolete language.

4VAC25-145-10. Definitions.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Department of Mines, Minerals and Energy.

"Division" means the Division of Mined Land Reclamation.

"Net worth" means total assets less total liabilities including funds pledged or otherwise obligated to the Commonwealth or other in effect at any time during the contract period and any other contingent liabilities that might materially affect the Commonwealth's ability to realize the amount of bond required in the event of forfeiture.

"Operator" means any person engaging in coal surface mining operations whether or not such coal is sold within or without the Commonwealth.

"Reclamation project" means any work contracted out by or on behalf of the division for reclamation of eligible lands and waters, and defined in § 45.1-262 of the Code of Virginia and funded by the Federal Office of Surface Mining or reclamation of mined lands where the operator who mined the land has had his bond covering the land forfeited to the division or otherwise defaulted on his reclamation obligation and the project is funded either by the forfeited bond or the Virginia Coal Surface Mining Reclamation Fund.

"Relevant mining experience" means at least three years of satisfactory mining and reclamation work in the Commonwealth under ~~Chapters 17 or Chapter~~ Chapter 19 of Title 45.1 of the Code of Virginia ~~or a combination of both~~. The operator shall have active reclamation work experience for two of the three years.

"State reclamation program" means Articles 4 and 5 of Chapter 19 of Title 45.1 of the Code of Virginia, as well as reclamation done by or for the Commonwealth and funded by the forfeited bond of an operator.

4VAC25-145-20. Satisfactory ~~mining and reclamation work~~ Operator requirements.

A. Operators must demonstrate relevant mining experience in order to bid on or be awarded contracts for any reclamation project in the Commonwealth. An operator may demonstrate satisfactory mining and reclamation work to the division by showing (i) that the operator has obtained partial or complete bond release on a coal surface mining permit obtained pursuant to Chapter ~~17~~ 19 of Title 45.1 of the Code of Virginia under his control, or that all reclamation work on any active permit operated or controlled by the operator is ~~up-to-date~~ up to date; and (ii) that no coal surface mining permit under his control has any outstanding violations of any federal, state or local agency's laws, rules, regulations or ordinances unless the operator submits proof to the division that such violations have been corrected or are being corrected to the satisfaction of the agencies citing of such violations.

B. No operator shall be allowed to bid on or be awarded contracts for any reclamation project in the Commonwealth if:

1. The director ~~of the department~~, after opportunity for a hearing, finds that the operator controls or has controlled mining operations with a demonstrated pattern of willful violations of the Federal Act or State Reclamation Program of such nature and duration with such resulting environmental damage as to indicate an intent not to comply with the Federal Act, P.L. 95-87 or State Reclamation Program.

2. The operator has had a coal surface mining permit revoked or suspended and has not been re-instated by the director; has had his bond forfeited; or has received an order to show cause why his permit should not be revoked or suspended.

4VAC25-145-30. Compliance with other laws and obligations.

A. The operator bidding or seeking to bid on reclamation projects shall comply with all other applicable laws, ordinances, orders, rules and regulations of any federal, state or local agency with jurisdiction over the operator's mining or reclamation activities.

B. The operator shall comply with all applicable requirements of the division with regard to bidding on reclamation projects in the Commonwealth, excepting any requirements waived by § 45.1-161.1 of the Code of Virginia and this regulation.

4VAC25-145-40. Financial information; bonding.

A. Any operator bidding or seeking to bid on reclamation projects in the Commonwealth shall submit prior to the bidding, certification by a CPA certified public accountant, that the company has a net worth of at least \$1 million in

order to qualify for 50% reduction in the performance bond. Certification of at least \$500,000 will qualify the applicant for a reduction of 25% of the performance bond. Net worth under \$500,000 will not be eligible for any adjustment in the bid and performance bond.

B. The director, or his designee, after reviewing the information contained in the ~~CPA statements~~ certification described in subsection A of this section, shall adjust the bid and performance bonds accordingly unless he has information available to him that would contradict the net worth.

~~C. Net worth means total assets less total liabilities including funds pledged or otherwise obligated to the Commonwealth or other in effect at any time during the contract period and any other contingent liabilities that might materially affect the Commonwealth's ability to realize the amount of bond required in the event of forfeiture.~~

VA.R. Doc. No. R12-2927; Filed May 2, 2012, 4:17 p.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The following amendments are exempt from the Virginia Administrative Process Act pursuant to § 2.2-4002 C of the Code of Virginia, which provides that minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act, Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia, made by the Virginia Code Commission pursuant to § 30-150, shall be exempt from the provisions of the Virginia Administrative Process Act.

Titles of Regulations: **10VAC5-50. Industrial Loan Associations (amending 10VAC5-50-20, 10VAC5-50-30).**

10VAC5-60. Consumer Finance Companies (amending 10VAC5-60-20, 10VAC5-60-30, 10VAC5-60-60).

10VAC5-80. Real Estate Settlement Agent Rules (amending 10VAC5-80-10, 10VAC5-80-20, 10VAC5-80-40).

10VAC5-110. Credit Counseling (amending 10VAC5-110-10, 10VAC5-110-30).

10VAC5-120. Money Order Sellers and Money Transmitters (amending 10VAC5-120-10, 10VAC5-120-50).

10VAC5-130. Virginia Financial Institution Holding Companies (amending 10VAC5-130-10, 10VAC5-130-20).

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Statutory Authority:

10VAC5-50: § 6.2-1404 of the Code of Virginia.

10VAC5-60: § 6.2-1535 of the Code of Virginia.

10VAC5-80: § 55-525.20 of the Code of Virginia.

10VAC5-110: § 6.2-2013 of the Code of Virginia.

10VAC5-120: § 6.2-1913 of the Code of Virginia.

10VAC5-130: § 6.2-713 of the Code of Virginia.

Effective Date: June 1, 2012.

Agency Contact: Todd Rose, Senior Counsel, General Counsel's Office, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9107, FAX (804) 371-9211, or email todd.rose@scc.virginia.gov.

Summary:

Several chapters of Title 10 of the Virginia Administrative Code pertaining to Finance and Financial Institutions are updated to replace references to Title 6.1 of the Code of Virginia with references to Title 6.2 of the Code of Virginia to reflect the recodification of Title 6.1 of the Code of Virginia in the fall of 2010.

10VAC5-50-20. Surety bond upon all active officers.

A. Every industrial loan association as defined in Chapter 5 14 (§ ~~6.1-227~~ 6.2-1400 et seq.) of Title ~~6.1~~ 6.2 of the Code of Virginia shall obtain and keep in force upon all its active officers a bond or bonds in a surety company authorized to do business in this Commonwealth in the penalty of whatever amount is deemed appropriate by its board of directors.

B. No bond given pursuant to this section may be cancelled without first giving the Commissioner of Financial Institutions 10 days' written notice of such cancellation, and every such bond shall contain a provision to that effect.

10VAC5-50-30. Schedule prescribing annual fees paid for examination, supervision, and regulation of industrial loan associations.

Pursuant to the provision of ~~Section 6.1-237.4~~ § 6.2-1414 of the Code of Virginia, the State Corporation Commission hereby promulgates the following schedule prescribing the annual fee to be paid by every industrial loan association for its supervision and regulation, as follows:

SCHEDULE					
Asset Interval		Fee			
Assets Exceeding	But Not Exceeding	Pay This Amount	Plus		Assets Exceeding
\$0	\$2 million	\$1,200	0		
2 million	5 million	1,200	.000900	x	\$2 million
5 million	25 million	3,900	.000120	x	5 million
25 million		6,300	.000060	x	25 million

The assessment calculation shall be rounded down to the nearest whole dollar amount. The assessment shall be computed on the basis of the association's total assets as shown by its last Consolidated Report of Condition made as of the close of business for the preceding calendar year as filed with the Bureau of Financial Institutions.

10VAC5-60-20. Time limit for compliance.

Licenses shall have 30 days after the date a loan is paid in full, or a judgment is satisfied, or a borrower's obligation is otherwise terminated to accomplish the acts required by § ~~6.1-282(4)~~ 6.2-1524 G of the Code of Virginia.

Failure so to comply within that time limit shall constitute a violation of ~~said subdivision~~ the subsection, which violation will result in penalties as provided by law.

10VAC5-60-30. Allotment program loans; applicability; definitions; rules.

A. This chapter applies to all licensees under ~~the Consumer Finance Act (the Act)~~ Chapter 15 (§ 6.2-1500 et seq.) of Title 6.2 of the Code of Virginia making any loan under ~~the Act~~ Chapter 15 of Title 6.2 of the Code of Virginia in connection with which loan a borrower authorizes an allotment and automatic disbursement from an account for the purpose of making any payments required by the loan agreement. Such a loan is referred to herein as an "allotment program loan."

B. As used in this chapter the following terms shall have the following meanings:

"Allotment" means payment of any part of a borrower's military pay to a financial institution as permitted under federal law and regulations.

"Automatic disbursement" means payment, by a financial institution to a licensee, of funds received pursuant to an allotment.

"Borrower" means any person in the United States military service obligated, directly or contingently, to repay a loan made by a licensee.

"Licensee" has the meaning set forth in § ~~6.1-245~~ 6.2-1500 of the Code of Virginia.

C.1. No licensee shall require any allotment or automatic disbursement, or a borrower's execution of the Allotment Disclosure Form appended to this chapter, as a condition to making a loan under ~~the Act Chapter 15 (§ 6.2-1500 et seq.)~~ of Title 6.2 of the Code of Virginia.

2. A licensee making an allotment program loan shall bear all costs and expenses incident to the allotment and automatic disbursement.

3. When making an allotment program loan, a licensee shall use the Allotment Disclosure Form appended to this chapter. The form shall be printed or typed without alteration on one side of a paper separate from all other papers or documents obtained by the licensee in type of size not less than that known as 12 point. All blanks on the form, other than those blanks to be filled in with the name of the licensee shall be filled in by the borrower and the filled-in form shall be signed and dated by the borrower. The completed form shall be kept in the separate loan file maintained with respect to the loan for the period specified in § ~~6.1-300~~ 6.2-1533 of the Code of Virginia.

4. No licensee making an allotment program loan shall withhold any part of the proceeds of the loan to be applied to any payment required under the loan.

Attachment: Allotment Disclosure Form

ALLOTMENT DISCLOSURE FORM

1. I, (APPLICANT'S NAME), intend to apply for an allotment of my military pay in the amount of \$(AMOUNT) per month to an account in my name at (FINANCIAL INSTITUTION).

2. I also intend to authorize disbursement of funds from my account at (FINANCIAL INSTITUTION) in the amount of \$ (AMOUNT) per month for the purpose of making monthly payments on my loan with (FINANCE COMPANY).

3. I am authorizing the allotment and automatic disbursement voluntarily and solely for my own convenience, and acknowledge that (FINANCE COMPANY) has not required me to authorize the allotment or automatic disbursement, or to sign this form, as a condition to making me a loan.

4. I understand that I can cancel the allotment and automatic disbursement at any time, and understand that I am not obligated to pay any fee or charge to any person or company, directly or indirectly, for the allotment or automatic disbursement.

(Applicant's Signature)

(Date)

10VAC5-60-60. Schedule prescribing annual fees paid for examination, supervision, and regulation of consumer finance licenses.

Pursuant to § ~~6.1-299.1~~ 6.2-1532 of the Code of Virginia, the following schedule sets the fees to be paid annually by consumer finance licensees for their licenses, and to defray the costs of examination, supervision and regulation of licensed consumer finance offices:

Minimum fee - \$300 per office open January 1 of the current calendar year.

In addition to the minimum fee, the following fee based on total assets:

SCHEDULE	
Total Assets	Fee
Over \$300,000 - \$750,000	\$.85 per \$1,000 or fraction thereof
\$750,000 - \$2,000,000	\$.70 per \$1,000 or fraction thereof
Over \$2,000,000	\$.55 per \$1,000 or fraction thereof

The annual fee for each licensee will be computed on the basis of its total assets combined with the total assets of all other businesses conducted in any of its licensed offices as of the close of business December 31 of the preceding calendar year. The amounts of such total assets will be derived from the annual reports which § ~~6.1-304~~ 6.2-1534 of the Code of Virginia requires licensees to file with the Bureau of Financial Institutions on or before the first day of April of each year.

In accordance with § ~~6.1-299.1~~ 6.2-1532 of the Code of Virginia, annual fees for any given calendar year will be assessed on or before May 1 of that year and must be paid on or before June 1 of that year. Fees are to be assessed using the foregoing schedule for the calendar year which began January 1, 1983. This fee schedule will be in effect until it is amended or revoked by order of the Commission.

10VAC5-80-10. Definitions.

As used in this chapter:

"Affiliate" means a company the majority of the ownership interest in which is held, directly or indirectly, by a company which owns a financial institution.

"Bureau" means the State Corporation Commission Bureau of Financial Institutions.

"Company" includes natural persons and any and all types of organizations and legal entities.

"Financial institution" has the meaning set forth in § ~~6.1-2.1~~ 6.2-100 of the Code of Virginia, and includes all such

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financial institutions authorized to do business in Virginia under Virginia or federal law.

"Party to the real estate transaction" (party) and "settlement agent" have the meanings set forth in § ~~6-1-2-20~~ 55-525.16 of the Code of Virginia.

"Subsidiary" means a company the majority of the ownership interest in which is held, directly or indirectly, by a financial institution.

10VAC5-80-20. Registration with the Virginia State Bar.

All financial institutions, and their subsidiaries and affiliates, acting in the capacity of a settlement agent shall register with the Virginia State Bar in accordance with the provisions of § ~~6-1-2-26~~ 55-525.30 of the Code of Virginia.

10VAC5-80-40. Escrow accounts and audits.

All funds received by a financial institution or financial institution subsidiary or affiliate, in the company's capacity of settlement agent and intended for distribution in whole or part to others, shall be deposited in a separate escrow account maintained in a bank, savings institution or credit union authorized to conduct business in Virginia. The company shall have the escrow account audited annually as provided in § ~~6-1-2-21-E~~ 55-525.20 C of the Code of Virginia and conforming to the American Institute of Certified Public Accountants, Statement on Auditing Standards, Special Reports, and shall file a copy of the audit report with the bureau promptly.

10VAC5-110-10. Definitions.

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

"Bureau" means the Bureau of Financial Institutions.

"Commissioner" means the Commissioner of Financial Institutions.

~~"Bureau," "commissioner," "debt Debt management plan;"~~ and "licensee" shall have the meanings ascribed to them in § ~~6-1-363.2~~ 6.2-2000 of the Code of Virginia.

"Reporting period" means the first six months of a calendar year or the last six months of a calendar year, as the case may be.

10VAC5-110-30. Schedule of annual fees for the examination, supervision, and regulation of ~~credit counseling~~ agencies providing debt management plans.

Pursuant to § ~~6-1-363.14~~ 6.2-2012 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by persons licensed under Chapter ~~40-2~~ 20 (§ ~~6-1-363.2~~ 6.2-2000 et seq.) of Title ~~6-1~~ 6.2 of the Code of Virginia. The fees are to defray the costs of examination,

supervision, and regulation of licensees by the Bureau of Financial Institutions.

SCHEDULE

If a licensee maintained less than 250 debt management plans for Virginia residents as of December 31 of the calendar year preceding the year of assessment, the licensee shall pay an annual fee of \$0 plus \$4.33 per debt management plan.

If a licensee maintained 250 or more debt management plans for Virginia residents as of December 31 of the calendar year preceding the year of assessment, the licensee shall pay an annual fee of \$500 plus \$4.33 per debt management plan.

The fee assessed using the above schedule shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before June 1 for the current calendar year. The fee shall be paid on or before July 1.

The annual report, due March 25 each year, of each licensee provides the basis for its assessment. In cases where a license has been granted between January 1 and March 25, the licensee's initial annual fee shall be \$250.

Fees prescribed and assessed by this schedule are apart from, and do not include, the reimbursement for expenses permitted by subsection B of § ~~6-1-363.14~~ 6.2-2012 of the Code of Virginia.

10VAC5-120-10. Definitions.

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

"Money order," "money transmission," and "licensee" have the meaning ascribed to them in § ~~6-1-370~~ 6.2-1900 of the Code of Virginia.

"Reporting period" means a calendar quarter, the first six months of a calendar year, or the last six months of a calendar year, as the case may be.

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

Pursuant to subsection B of § ~~6-1-373~~ 6.2-1905 of the Code of Virginia, the commission sets the following schedule for the annual assessment to be paid by persons licensed under Chapter ~~42~~ 19 (§ ~~6-1-370~~ 6.2-1900 et seq.) of Title ~~6-1~~ 6.2 of the Code of Virginia. The assessment defrays the costs of the examination and supervision of licensees by the Bureau of Financial Institutions.

The annual assessment shall be \$0.000047 per dollar of money orders sold and money transmitted by a licensee pursuant to Chapter ~~42~~ 19 (§ ~~6-1-370~~ 6.2-1900 et seq.) of Title ~~6-1~~ 6.2 of the Code of Virginia. The assessment shall be based on the dollar volume of business conducted by a

licensee, either directly or through its authorized delegates, during the calendar year preceding the year of the assessment.

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

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

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

Fees prescribed and assessed pursuant to this schedule are apart from, and do not include, the following: (i) the annual license renewal fee of \$750 authorized by subsection A of § ~~6.1-373~~ 6.2-1905 of the Code of Virginia and (ii) the reimbursement for expenses authorized by subsection C of § ~~6.1-373~~ 6.2-1905 of the Code of Virginia.

10VAC5-130-10. Filing of registration statements required.

Pursuant to the direction of § ~~6.1-382~~ 6.2-702 of the Code of Virginia, every Virginia financial institution holding company (as defined in § ~~6.1-384~~ 6.2-700 of the Code of Virginia) which was in existence as of November 1, 1978, shall register not later than December 31, 1978, by filing with the Bureau of Financial Institutions a copy of the registration statement it has filed with a federal agency pursuant to the Bank Holding Company Act (12 USC § 1841 ff et seq.), or pursuant to the Home Owners' Loan Act (12 USC § 1467a).

Any company which becomes a Virginia financial institution holding company after November 1, 1978, shall file with the Bureau of Financial Institutions, within 180 days of its becoming such a company, a copy of the registration statement it files with a federal agency under the provisions of the Bank Holding Company Act (12 USC § 1841 ff et seq.) or under the Home Owners' Loan Act (12 USC § 1467a).

10VAC5-130-20. Reporting by Virginia financial institution holding companies.

Every company which has control over any Virginia financial institution (within the meaning of Chapter ~~43~~ 7 (§ ~~6.1-384~~ 6.2-700 et seq.) of Title ~~6.1~~ 6.2 of the Code of Virginia) shall report annually by filing with the Bureau of Financial Institutions a copy of the report it submits to the federal regulatory agency requiring such reports. Excluded from the reporting requirement herein shall be any such company which, according to an applicable provision of the Bank Holding Company Act (12 USC § 1841 ff et seq.) is exempt from such reporting to a federal agency; or which acquires a controlling interest in a Virginia financial institution solely: (i) in a fiduciary capacity, (ii) in connection with the company's underwriting of securities or proxy

solicitation, or (iii) in connection with the company's securing or collecting a debt.

VA.R. Doc. No. R12-2583; Filed May 3, 2012; 2:49 p.m.

Proposed Regulation

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

Title of Regulation: **10VAC5-161. Mortgage Loan Originators (amending 10VAC5-161-10, 10VAC5-161-20, 10VAC5-161-30, 10VAC5-161-40, 10VAC5-161-60; adding 10VAC5-161-45, 10VAC5-161-70, 10VAC5-161-80).**

Statutory Authority: §§ 6.2-1720 and 12.1-13 of the Code of Virginia.

Public Hearing Information: Public hearing will be scheduled upon request.

Public Comment Deadline: June 20, 2012.

Agency Contact: Nicholas C. Kyrus, Bureau of Financial Institutions Deputy Commissioner, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9191, FAX (804) 371-9416, or email nick.kyrus@scc.virginia.gov.

Summary:

The State Corporation Commission is proposing changes to 10VAC5-161, which governs mortgage loan originators under Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia. The proposed regulations set forth the criteria used for determining whether an applicant for a mortgage loan originator license has the financial responsibility, character, and general fitness required for licensure under § 6.2-1706 of the Code of Virginia. The proposal also includes various conforming and clarifying amendments based on regulations adopted in 2011 by the U.S. Department of Housing and Urban Development and the Consumer Financial Protection Bureau pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. In addition, the proposed regulations reflect certain amendments to Chapter 17 made by Chapters 52 and 187 of the 2012 Virginia Acts of Assembly, which will become effective on July 1, 2012. The proposed regulations also (i) require records containing consumers' personal financial information to be disposed of in a secure manner, (ii) clarify the commission's enforcement authority under Chapter 17, and (iii) require mortgage loan originators to provide the Bureau of Financial Institutions with a written response, books,

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records, documentation, or information requested by the bureau within the time period specified in the bureau's request. Various other technical and clarifying amendments, including changes resulting from the recodification of Title 6.1 of the Code of Virginia, have also been proposed.

AT RICHMOND, MAY 15, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2012-00022

Ex Parte: In re: Mortgage Loan Originators

ORDER TO TAKE NOTICE

Section 6.2-1720 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the purposes of Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia ("Chapter 17"). The Commission's regulations governing licensed mortgage loan originators ("licensees") are set forth in Chapter 161 of Title 10 of the Virginia Administrative Code ("Chapter 161").

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to Chapter 161. The proposed regulations set forth the criteria used for determining whether an applicant for a mortgage loan originator license has the financial responsibility, character, and general fitness required for licensure under § 6.2-1706 of the Code of Virginia. The proposed changes to Chapter 161 also include various conforming and clarifying amendments based on federal regulations adopted in 2011 pursuant to the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act").¹ In addition, the proposed regulations reflect certain statutory amendments to Chapter 17 that will become effective on July 1, 2012.² The proposed regulations also (i) require records containing consumers' personal financial information to be disposed of in a secure manner, (ii) clarify the Commission's enforcement authority under Chapter 17, and (iii) require licensees to provide the Bureau with a written response, books, records, documentation, or information requested by the Bureau within the time period specified in the Bureau's request. Various other technical and clarifying amendments, including changes resulting from the recodification of Title 6.1 of the Code of Virginia,³ also have been proposed.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with a proposed effective date of July 1, 2012.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations are appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before June 20, 2012. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2012-00022. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

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

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

AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send by e-mail or U.S. mail a copy of this Order, together with a copy of the proposed regulations, to all licensed mortgage loan originators, licensed mortgage lenders, licensed mortgage brokers, and such other interested parties as he may designate.

¹The S.A.F.E. Act authorized the U.S. Department of Housing and Urban Development ("HUD") to monitor and enforce states' compliance with the S.A.F.E. Act's requirements for state licensing and registration, and HUD issued rules setting minimum standards for state licensing and registration. 76 Fed. Reg. 38464 (June 30, 2011). Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred rulemaking authority under the S.A.F.E. Act from HUD to the Consumer Financial Protection Bureau ("CFPB") effective July 21, 2011. The CFPB thereafter published Regulation H, S.A.F.E. Mortgage Licensing Act - State Compliance and Bureau Registration System, 12 C.F.R. Part 1008, based on HUD's regulations. 76 Fed. Reg. 78483 (Dec. 19, 2011).

²Chapters 52 and 187 of the 2012 Virginia Acts of Assembly.

³Chapter 794 of the 2010 Virginia Acts of Assembly recodified Title 6.1 of the Code of Virginia as Title 6.2 of the Code of Virginia effective October 1, 2010. Chapter 16.1 of Title 6.1 has been replaced by Chapter 17 of Title 6.2.

10VAC5-161-10. Definitions.

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

"Bureau," ~~means the State Corporation Commission's Bureau of Financial Institutions~~ "commission,"

"commissioner," and "person" shall have the meanings ascribed to them in § 6.2-100 of the Code of Virginia.

"Chapter 16" means Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2 of the Code of Virginia.

"Chapter 17" means Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia.

"License application" means a written request for a mortgage loan originator license pursuant to Chapter 17 and this chapter.

"Licensee," "mortgage loan originator," "person," "registered mortgage loan originator," "registry," "residential mortgage loan," and "unique identifier" shall have the meanings ascribed to them in § ~~6.1-431.1~~ 6.2-1700 of the Code of Virginia.

10VAC5-161-20. Individuals subject to licensure.

A. ~~On or after July 1, 2010, the following individuals must obtain a license Unless exempt from licensure pursuant to subsection B of § 6.2-1701 of the Code of Virginia, the following individuals who engage in the business of taking applications for residential mortgage loans, or offering or negotiating the terms of residential mortgage loans, shall obtain and maintain annually a license pursuant to Chapter 17 and this chapter:~~

1. Individuals ~~acting as mortgage loan originators~~ who are employees or exclusive agents of ~~persons~~ a person licensed under Chapter 16 (~~§ 6.1-408 et seq.~~) of Title ~~6.1~~ of the Code of Virginia; This includes individuals who are employees of professional employment organizations or staffing services, who shall become and remain exclusive agents of a person licensed under Chapter 16.

2. Individuals, other than registered mortgage loan originators, ~~acting as mortgage loan originators~~ who are employees or exclusive agents of ~~persons~~ a person exempt from licensure under Chapter 16 (~~§ 6.1-408 et seq.~~) of Title ~~6.1~~ of the Code of Virginia; and,

3. Individuals ~~acting as mortgage loan originators~~ who are not employees or exclusive agents of either ~~persons~~ a person licensed under Chapter 16 (~~§ 6.1-408 et seq.~~) of Title ~~6.1~~ of the Code of Virginia or a person exempt from such licensure.

B. ~~Individuals who are coemployees of professional employer organizations or staffing services shall be deemed to be employees of the client company. For purposes of Chapter 17 and this chapter:~~

1. An individual takes an application for a residential mortgage loan if the individual receives a residential mortgage loan application for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower, or to

accept the terms offered by a borrower or prospective borrower in response to a solicitation.

2. An individual offers or negotiates the terms of a residential mortgage loan if the individual:

a. Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;

b. Communicates directly or indirectly with a borrower or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or

c. Recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower.

10VAC5-161-30. License application procedure.

A. ~~Applications for a mortgage loan originator license License applications~~ shall be ~~made~~ submitted through the registry in accordance with instructions from the registry and the bureau. In connection with such license applications, the ~~individual seeking a license~~ applicant shall furnish the registry with all required information concerning his identity, personal history and experience, and fingerprints, and shall pay or cause to be paid through the registry required registry fees and ~~an~~ a license application fee of \$150.

B. Within five days after submitting ~~an~~ a license application for a mortgage loan originator license with through the registry, a bond with corporate surety on a commission-approved form and in an amount conforming to 10VAC5-161-50 shall be filed with the bureau, together with such further information as the bureau may require concerning the applicant's qualifications for licensure. In the case of individuals described in 10VAC5-161-20 A 1 and 2, the bond shall be filed (or documentation shall be filed indicating that the applicant is covered by a bond previously filed) by the person for whom the applicant will ~~perform mortgage loan origination services~~ engage in the business of a mortgage loan originator. Filing of a bond under this subsection by a person licensed under Chapter 16 (~~§ 6.1-408 et seq.~~) of Title ~~6.1~~ of the Code of Virginia shall constitute compliance with § ~~6.1-413~~ 6.2-1604 of the Code of Virginia if the bond is in the amount required under § ~~6.1-413~~ 6.2-1604 of the Code of Virginia. In the case of individuals described in 10VAC5-161-20 A 3, the bond shall be filed by the individual applicant. In either case the person filing the bond shall, unless such information is contained in a prior filing under Chapter 16 of Title ~~6.1~~ of the Code of Virginia, simultaneously provide information to the bureau concerning ~~his or its~~ the dollar volume of residential mortgage loans originated by such person during the immediately preceding calendar year.

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C. If the bureau requests information to complete a deficient license application and the information is not received within 60 days of the bureau's request, the license application shall be deemed abandoned unless a request for an extension of time is received and approved by the bureau prior to the expiration of the 60-day period. However, this provision shall not be construed to prohibit the commission from denying a license application that does not meet the requirements of Chapter 17 or this chapter.

10VAC5-161-40. Conditions of licensure and renewals.

A. A mortgage loan originator license will be granted only if ~~the~~ an individual meets the following conditions:

1. ~~Application is made~~ The individual has submitted a license application in accordance with 10VAC5-161-30;
2. The individual has obtained a unique identifier from the registry;
3. The individual has never had a mortgage loan originator license revoked by any governmental authority;
4. The individual's criminal history record contains no disqualifying convictions under § ~~6.1-431.8~~ 6.2-1707 of the Code of Virginia;
5. The individual has completed the prelicensing education prescribed by § ~~6.1-431.9~~ 6.2-1708 of the Code of Virginia;
6. The individual has achieved an acceptable score on the qualified written test prescribed by § ~~6.1-431.10~~ 6.2-1709 of the Code of Virginia; and
7. The commission finds that the individual possesses the financial responsibility, character, and general fitness required for licensure by § ~~6.1-431.7~~ 6.2-1706 of the Code of Virginia and 10VAC5-161-45.

B. Licenses shall ~~be subject to renewal~~ expire at the end of each calendar year unless granted within 90 days before the end renewed by the commission on or after November 1 of the preceding same calendar year. In order to renew a To request license renewal, a licensee must renew shall (i) submit a license renewal application through the registry on or before the end of the current license year in accordance with instructions from the registry and the bureau. The licensee shall; (ii) furnish the registry and the bureau with all required information and documentation and shall; (iii) pay or cause to be paid through the registry all required registry fees and a license renewal fee of \$100; (iv) obtain the continuing education prescribed in § 6.2-1710 of the Code of Virginia; and (v) comply with any other renewal requirements imposed by the registry.

C. A mortgage loan originator license will be renewed only if the ~~licensee meets~~ commission finds that the following conditions have been met:

1. ~~License renewal application is made in accordance with~~ The licensee has satisfied the requirements of subsection B of this section; and

2. The licensee has complied with Chapter 17 and this chapter, and continues to meet the conditions for initial licensure; and,

3. ~~The licensee has obtained the continuing education prescribed in § 6.1-431.11 of the Code of Virginia.~~

D. If (i) a licensee fails to timely meet the ~~conditions~~ requirements specified in subsection ~~C~~ B of this section, but meets such ~~conditions~~ requirements and pays a reinstatement fee of \$30 before March 1 of a ~~renewal year and pays a reinstatement fee of \$30~~ the following calendar year, and (ii) the commission makes the findings specified in subsection C of this section, his license will shall be reinstated and renewed.

10VAC5-161-45. Financial responsibility, character, and general fitness.

A. Except as otherwise provided in this subsection, an applicant shall be found to have the financial responsibility required by § 6.2-1706 of the Code of Virginia.

1. An applicant shall not be found to have the financial responsibility required by § 6.2-1706 if the commission finds that the applicant has one or more of the following:

- a. One or more outstanding judgments or collection accounts that in the aggregate exceed \$2,000;
- b. One or more outstanding tax liens or other governmental liens that in the aggregate exceed \$1,000;
- c. One or more delinquent accounts, including any charged-off accounts but excluding any items in subdivision A 1 a or b of this section, that in the aggregate exceed \$3,000;
- d. One or more foreclosures within the past seven years;
or
- e. Such other debts as the commission deems relevant.

2. Notwithstanding subdivision A 1 of this section, an applicant shall be found to have the financial responsibility required by § 6.2-1706 if the commission determines that (i) the applicant has demonstrated good faith efforts to satisfy all of the outstanding debts enumerated in subdivision A 1 of this section and (ii) one or more of the following substantially impeded the applicant's ability to satisfy his outstanding debts:

- a. Loss of income;
- b. Divorce;
- c. Medical expenses;
- d. Natural disaster; or

e. Such other unanticipated events or circumstances that the commission deems relevant.

B. An applicant shall be found to have the character and general fitness required by § 6.2-1706 of the Code of Virginia unless one or more of the following are applicable:

1. The applicant has been convicted of, or pled guilty or nolo contendere to, a crime involving: (i) financial services or a financial services-related business, (ii) fraud, (iii) a false statement or omission, (iv) felony theft or wrongful taking of property, (v) bribery, (vi) perjury, (vii) forgery, (viii) counterfeiting, (ix) extortion, (x) breach of trust, (xi) money laundering, or (xii) dishonesty. However, in evaluating any of these crimes, the commission may take into account, among other things, the length of time elapsed since the offense was committed, the age of the applicant at the time of the offense, and the nature of the offense.

2. The commission finds that (i) the applicant made a material misrepresentation or omission in either his license application or any other information furnished by the applicant in conjunction with such license application or (ii) a third party made a material misrepresentation or omission in support of the applicant's request for a mortgage loan originator license and the applicant failed to promptly notify the bureau after becoming aware of the misrepresentation or omission. However, in evaluating a misrepresentation or omission, the commission may take into account, among other things, any explanation given for the misrepresentation or omission. For purposes of this subdivision, a misrepresentation or omission shall be considered material if the commission would consider the stated or omitted information to be important in the investigation of an applicant's request for a mortgage loan originator license.

3. The commission possesses other information that demonstrates that the applicant lacks the character or general fitness required by § 6.2-1706 of the Code of Virginia.

C. Pursuant to § 6.2-1716 of the Code of Virginia, the commission may suspend or revoke any license issued under Chapter 17 at any time following the issuance of such license if the commission finds, based on the criteria set forth in this section, that a licensee no longer possesses the financial responsibility, character, or general fitness to warrant belief that such person will act as a mortgage loan originator efficiently and fairly, in the public interest, and in accordance with law.

10VAC5-161-60. Required reports and notices.

A. On or before March 1 of each year, each Each person for whom an individual described in 10VAC5-161-20 A 1 or 2 performs services engages in the business of a mortgage loan originator shall file, on or before March 1 of each year, an

annual report with the bureau stating the amount of residential mortgage loans made or brokered during the preceding calendar year, identifying all licensees performing services for that person, and providing such additional information as the bureau may require. Timely filing of the annual report required by Chapter 16 (~~§ 6.1-408 et seq.~~) of Title 6.1 of the Code of Virginia by a person licensed under that chapter shall constitute compliance with this subsection by that person if the annual report contains the information specified in this subsection.

B. ~~On or before March 1 of each year, each~~ Each licensee who is an individual described in 10VAC5-161-20 A 3 shall file, ~~on or before March 1 of each year,~~ an annual report with the bureau stating the amount of residential mortgage loans originated during the preceding calendar year and providing such additional information as the bureau may require.

C. Each licensee shall give notice to the bureau, ~~either directly for a notice under subdivision 1 of this subsection or through the registry for other notices required by this section,~~ within ~~15 days~~ one business day after the occurrence of ~~any~~ either of the following events:

~~1. Cessation of activities for which a license is required, upon receipt of which notice the individual's license will be placed in inactive status and the individual shall not engage in activities requiring licensure under this chapter until such time as the individual meets the description in 10VAC5-161-20 A 1, 2, or 3 and other provisions of this chapter;~~

~~2. 1. Termination of, or separation from, employment or exclusive agency as a mortgage loan originator for a person licensed or exempt from licensing under Chapter 16 of Title 6.1 of the Code of Virginia, upon receipt of which notice the individual's license will be placed in inactive status and the individual. A licensee who is no longer an employee or exclusive agent of a person licensed or exempt from licensing under Chapter 16 shall not engage in activities requiring licensure under this chapter Chapter 16 until such time as the individual meets the description in 10VAC5-161-20 A 1, 2, or 3 and other provisions of this chapter; (i) the individual obtains a mortgage broker license under Chapter 16 or (ii) the individual becomes a bona fide employee or exclusive agent of a person who is licensed or exempt from licensing under Chapter 16 and the requirements set forth in (i) and (ii) of subdivision 2 of this section have been satisfied.~~

~~3. 2. Commencement of employment or exclusive agency as a mortgage loan originator for a new person licensed or exempt from licensing under Chapter 16 of Title 6.1 of the Code of Virginia, in which event the new person shall employ. A licensee who becomes an employee or exclusive agent of a person licensed or exempt from licensing under Chapter 16 shall not engage in activities requiring licensure under Chapter 16 until (i) the person~~

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licensed or exempt from licensing under Chapter 16 has complied with the surety bond filing requirements of § 6.2-1703 of the Code of Virginia, 10VAC5-161-30 B, and 10VAC5-161-50; or and (ii) the bureau has received a sponsorship request through the registry.

4. Surrender of a license, in which case the licensee shall mail his license to the bureau immediately upon giving notice of surrender of the license.

D. Pursuant to subsection B of § 6.2-1711 of the Code of Virginia, each licensee shall notify the commissioner through the registry within 10 days of any change of residential or business address. A licensee described in 10VAC5-161-20 A 1 or 2 shall be deemed to have complied with this requirement if a person licensed or exempt from licensing under Chapter 16 timely submits such notice on behalf of its employee or exclusive agent.

10VAC5-161-70. Responding to requests from the Bureau of Financial Institutions; disposal of records.

A. When the bureau requests a written response, books, records, documentation, or other information from a licensee, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information and such other factors as the bureau determines to be relevant under the circumstances. Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the investigation and examination authority provided for in § 6.2-1713 of the Code of Virginia.

B. If a licensee disposes of records containing a consumer's personal financial information following the expiration of any applicable record retention periods, such records shall be shredded, incinerated, or otherwise disposed of in a secure manner.

10VAC5-161-80. Enforcement; civil penalties.

A. Failure to comply with any provision of Chapter 17 or this chapter may result in civil penalties, license suspension, license revocation, the entry of a cease and desist order, or other appropriate enforcement action.

B. Pursuant to § 6.2-1719 of the Code of Virginia, an individual required to be licensed under Chapter 17 shall be subject to a separate civil penalty of up to \$2,500 for every violation of Chapter 17, this chapter, or other law or

regulation applicable to the conduct of the individual's business. Furthermore, if an individual violates any provision of Chapter 17, this chapter, or other law or regulation applicable to the conduct of the individual's business in connection with multiple borrowers, loans, or prospective loans, the individual shall be subject to a separate civil penalty for each borrower, loan, or prospective loan. For example, if an individual originates five loans and the individual violates two applicable laws in connection with each of the five loans, the individual shall be subject to a maximum civil penalty of \$25,000.

VA.R. Doc. No. R12-2883; Filed May 15, 2012; 3:11 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following amendments are exempt from the Virginia Administrative Process Act pursuant to § 2.2-4002 C of the Code of Virginia, which provides that minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act, Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia, made by the Virginia Code Commission pursuant to § 30-150, shall be exempt from the provisions of the Virginia Administrative Process Act.

Titles of Regulations: 10VAC5-190. Common Trust Funds (amending 10VAC5-190-10).

10VAC5-200. Payday Lending (amending 10VAC5-200-10, 10VAC5-200-20, 10VAC5-200-30, 10VAC5-200-35, 10VAC5-200-40, 10VAC5-200-50, 10VAC5-200-70, 10VAC5-200-75, 10VAC5-200-110, 10VAC5-200-115, 10VAC5-200-120).

Statutory Authority: §§ 6.2-1815 and 12.1-13 of the Code of Virginia.

Effective Date: June 1, 2012.

Agency Contact: Todd Rose, Senior Counsel, General Counsel's Office, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9107, FAX (804) 371-9211, or email todd.rose@scc.virginia.gov.

Summary:

Several chapters of Title 10 of the Virginia Administrative Code pertaining to Finance and Financial Institutions are updated to replace references to Title 6.1 of the Code of Virginia with references to Title 6.2 of the Code of Virginia to reflect the recodification of Title 6.1 of the Code of Virginia in the fall of 2010.

10VAC5-190-10. Definition of terms.

As used in this chapter:

"Common trust fund" shall have the meaning set forth in ~~§ 6.1-30.4~~ 6.2-1009 of the Code of Virginia.

"Common trust fund" will be equivalent in meaning to the term "collective investment fund" used in the regulations of the Comptroller of the Currency (12 CFR 9.18) and will include the following types of fund: (i) a fund maintained by a bank exclusively for the collective investment and re-investment of moneys contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under a uniform gifts-to-minors act, and (ii) a fund consisting solely of assets of retirement, pensions, profit-sharing, stock-bonus, or other such trusts.

Funds described in (i) above will be referred to herein as "fiduciary funds," and funds described in (ii) will be called "employee benefit trusts."

10VAC5-200-10. Definitions.

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

"Act" means ~~the Payday Loan Act (§ 6.1-444 et seq. of the Code of Virginia) Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia.~~

"Bureau" means the Bureau of Financial Institutions.

"Business day" for purposes of clause 1 (vi) of § ~~6.1-459~~ 6.2-1816 of the Code of Virginia and this chapter means a day on which the licensee's office is open for business as posted as required by subsection A of 10VAC5-200-70.

"Commission" means the State Corporation Commission.

"Duplicate original" for purposes of subdivision 2 of § ~~6.1-459~~ 6.2-1816 of the Code of Virginia and this chapter means an exact copy of a signed original, an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of clause 1(vi) of § ~~6.1-459~~ 6.2-1816 of the Code of Virginia and this chapter means a certified check, cashier's check, money order or, if the licensee is equipped to handle such payments, payment effected by use of a credit card.

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

"Member of the military services of the United States" for purposes of the Act and this chapter means a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

"Other dependent of a member of the military services of the United States" for purposes of the Act and this chapter means (i) an individual under the age of 18 whose mother or father is a member of the military services of the United States or (ii)

an individual for whom a member of the military services of the United States provided more than one-half of the individual's financial support for 180 days immediately preceding the date the individual applied for a payday loan.

"Small," as used in the definition of "payday loan" in § ~~6.1-444~~ 6.2-1800 of the Code of Virginia, means \$2,500 or less.

B. Other terms used in this chapter shall have the meaning set forth in § ~~6.1-444 of the Act~~ 6.2-1800.

10VAC5-200-20. Requirements for licensees; operating rules; acquisitions.

A. A licensee shall maintain unencumbered liquid assets per place of business in Virginia of at least \$25,000 at all times. The bureau may require submission of proof of maintenance of such liquid assets at any time.

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

C. Each original license shall be prominently posted in each place of business of the licensee. In order for a licensee to receive a replacement or reissued license, a licensee shall pay a fee of \$50 per place of business to the commission. Licenses will only be replaced or reissued if the licensee is in compliance with all laws and regulations applicable to the conduct of the licensee's business.

D. If a person has filed a bond with the bureau, as required by § ~~6.1-448~~ 6.2-1804 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or
2. The person ceases engaging in business as a payday lender.

E. Upon becoming licensed, a licensee shall give written notice to the bureau of its commencement of business within 10 days thereafter.

F. For purposes of clause 1 (v) of § ~~6.1-459~~ 6.2-1816 of the Code of Virginia, the number of days in a borrower's pay cycle and the corresponding minimum loan term shall be determined by a licensee in accordance with the following:

1. If a borrower is paid on a weekly or more frequent basis, there are seven days in the borrower's pay cycle and the minimum loan term shall be 14 days.
2. If a borrower is paid on a biweekly basis, there are 14 days in the borrower's pay cycle and the minimum loan term shall be 28 days.

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3. If a borrower is paid on a semimonthly basis, there are 15 days in the borrower's pay cycle and the minimum loan term shall be 31 days.

4. If a borrower is paid on a monthly basis, there are 30 days in the borrower's pay cycle and the minimum loan term shall be 62 days.

5. If a borrower is paid either (i) less frequently than monthly, or (ii) on an irregular basis (but less frequently than weekly), there are 30 days in the borrower's pay cycle and minimum loan term shall be 62 days.

G. A licensee shall retain supporting documentation for a borrower's pay cycle in each loan file, which may consist of (i) a copy of a borrower's pay stub or similar periodic earnings statement that clearly reflects the borrower's pay cycle, or (ii) a representation by the borrower in the written loan application.

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

I. With the exception of the check given by a borrower to a licensee as security for a payday loan, a licensee shall not collect or receive from a borrower any interest or fees permitted by § ~~6.1-460~~ 6.2-1817 of the Code of Virginia, either in whole or in part, prior to the date of loan maturity unless the borrower is voluntarily making a full or partial prepayment pursuant to 10VAC5-200-40. If a borrower enters into an extended payment plan or extended term loan, a licensee shall not collect or receive any interest or fees, either in whole or in part, prior to the due date of a scheduled installment unless the borrower is voluntarily making a payment in advance.

J. The amount of the check given by a borrower to a licensee as security for a payday loan shall not exceed the sum of the principal amount advanced to the borrower and the interest and fees permitted by § ~~6.1-460~~ 6.2-1817 of the Code of Virginia. If a borrower enters into an extended payment plan at the time a loan is obtained, the amount of the check shall not include any interest.

K. Upon satisfaction of a loan or upon learning that a loan has been satisfied, a licensee shall attach to each loan agreement either (i) a copy of the signed and dated receipt for the payment that satisfied the loan or (ii) if a judgment was obtained and satisfied, a copy of the judgment marked satisfied.

L. Except as otherwise provided in subdivision B 2 of 10VAC5-200-33 or subdivision D 1 of 10VAC5-200-35, the check used to secure a payday loan shall be dated as of the date the loan is due. A licensee shall not deposit or otherwise

present for payment a check given as security for a loan, including an extended term loan or a loan that a borrower elected to repay by means of an extended payment plan, prior to the date stated on the face of the check. A licensee shall not require or accept multiple checks or any additional or alternative security in connection with a payday loan.

M. If a borrower (i) cancels a loan in accordance with subsection G of 10VAC5-200-40, or (ii) repays a loan in full with cash or good funds instrument and not with the check securing the loan, the licensee shall immediately return the check given as security for the loan to the borrower.

10VAC5-200-30. Notice and payday lending pamphlet.

A. Before entering into a payday loan transaction, a licensee shall provide each prospective borrower with a pamphlet which explains the borrower's rights and responsibilities. This pamphlet shall use the exact language appearing in the "Payday Lending Pamphlet" set forth in 10VAC5-200-80. The form shall be printed or typed without alteration separate from all other papers or documents obtained by the licensee in type of size not less than that known as 12 point. The title of the pamphlet ("Payday Lending in the Commonwealth of Virginia-Borrower Rights and Responsibilities") and the headings for the individual sections of the pamphlet (e.g., "In General," "Notice from Lender," "Limitations on Security Interest," etc.) shall be in bold-face print or type.

B. Prior to furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification, a licensee shall provide each prospective borrower with a printed notice which states the following: "WARNING: A payday loan is not intended to meet long-term financial needs. It is recommended that you use a payday loan only to meet occasional or unusual short-term cash needs."

1. The notice and acknowledgement shall be printed or typed on 8-1/2 x 11 paper without alteration, be separate from all other papers or documents obtained by the licensee, and be in type not less than that known as 24 point. The notice must also contain an acknowledgement stating the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Payday Lending in the Commonwealth of Virginia-Borrower Rights and Responsibilities."

2. The notice must be signed and dated by each prospective borrower. A duplicate original of the acknowledged notice shall be kept in the separate loan file maintained with respect to the loan for the period specified in § ~~6.1-453~~ 6.2-1809 of the Code of Virginia.

10VAC5-200-35. Five payday loans within 180 days.

A. A borrower obtaining a fifth payday loan within any rolling 180-day period may elect, at the option of the borrower, (i) to repay the loan through an extended payment

plan, unless the borrower previously elected an extended payment plan within the preceding 12 months, or (ii) to obtain the loan in the form of an extended term loan.

B. If a borrower does not obtain an extended payment plan or extended term loan in connection with his fifth payday loan in 180 days, the borrower shall not be eligible for another payday loan until 45 days after the date the fifth payday loan is paid or otherwise satisfied in full.

C. If a borrower previously obtained an extended payment plan within the preceding 12-month period, the borrower shall not be eligible to repay a fifth payday loan obtained in any rolling 180-day period by means of an extended payment plan. However, if an eligible borrower elects to repay a fifth payday loan obtained in any rolling 180-day period by means of an extended payment plan, the provisions of 10VAC5-200-33 shall apply. A borrower who elects to repay such loan by means of an extended payment plan shall not be eligible for another payday loan until 90 days after the borrower has repaid or satisfied in full the balance of the loan.

D. The following provisions shall apply to extended term loans.

1. An extended term loan is a payday loan, as this term is defined in § ~~6.1-444~~ 6.2-1800 of the Code of Virginia. As with other payday loans, an extended term loan shall be secured by a check that does not exceed the sum of the principal amount advanced to the borrower and the interest and fees permitted by § ~~6.1-460~~ 6.2-1817 of the Code of Virginia. The check used to secure an extended term loan shall be dated as of the date the final installment is due. A licensee shall not require or accept multiple checks or any additional or alternative security in connection with an extended term loan. A borrower shall have the option of exchanging security checks with a licensee at the time the borrower makes a payment on an extended term loan. If a borrower wishes to exchange security checks, a licensee shall upon receipt of the payment return the check held as security to the borrower and the borrower shall deliver to the licensee a replacement security check, dated as of the date the final installment is due, for the remaining amount owed to the licensee.

2. If an eligible borrower elects an extended term loan, a licensee shall permit the borrower to repay the amount owed in four equal installments over a term of 60 days. The dollar amount of each installment shall be the same and the installment due dates shall be spread out evenly over the term of the extended term loan (i.e., an installment shall be due every 15 days).

3. The terms of an extended term loan shall be set forth in a written agreement signed and dated by the borrower. An eligible borrower may elect the extended term loan option only on the date a payday loan is made.

4. A borrower who obtains an extended term loan shall not be eligible for another payday loan during the longer of 90 days following the date the extended term loan is paid or otherwise satisfied in full, or 150 days following the date the extended term loan is obtained. Subject to one of the applicable waiting periods associated with a fifth loan in any rolling 180-day period, a borrower may be eligible for consecutive extended term loans or multiple extended term loans in any rolling 12-month period.

5. A licensee shall immediately give a borrower receipts, signed and dated by the licensee, for all payments made in connection with an extended term loan. The receipts shall also state the loan balance due after each payment.

6. A licensee shall retain the written and signed extended term loan agreement and provide the borrower with a duplicate original. A licensee shall also retain copies of receipts provided in accordance with subdivision 5 of this subsection. Upon full repayment or satisfaction of an extended term loan, a licensee shall mark the original extended term loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its loan records.

E. A licensee shall provide notice to borrowers of the potential availability of the extended term loan option in accordance with the provisions of this subsection.

1. A licensee shall conspicuously post in each licensed location a written notice in at least 24-point bold type informing borrowers that they may be eligible to obtain an extended term loan. The minimum size for such written notice shall be 24 inches by 18 inches.

2. The title of the written notice, which shall appear in at least 48-point bold type, shall be "NOTICE – EXTENDED TERM LOANS AVAILABLE TO BORROWERS OBTAINING A FIFTH PAYDAY LOAN WITHIN 180 DAYS."

3. The required text of the written notice shall be as follows:

The Payday Loan Act gives borrowers obtaining their fifth payday loan within 180 days the option to receive it in the form of an extended term loan. An extended term loan is a payday loan under which you are permitted to repay the amount you owe in four equal installments spread out evenly over a term of 60 days. You may obtain an extended term loan even if you previously obtained another extended term loan or an extended payment plan. If you want an extended term loan, you must choose this option on the date you obtain the payday loan. When you make a payment on an extended term loan, you will have the option of providing a replacement security check for the remaining amount you owe. Please be advised that if you obtain an extended term loan, you will not be permitted to get another payday loan from any lender for a period of 90

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days after you fully repay or satisfy the extended term loan or 150 days after you obtain the extended term loan (whichever is longer). However, even if you do not choose an installment payment arrangement, you will still be unable to obtain another payday loan from any lender for a period of 45 days after you fully repay or satisfy your fifth payday loan.

4. If the payday lending database referred to in 10VAC5-200-110 advises a licensee that an applicant is eligible for an extended term loan, the licensee shall immediately provide oral notice to the applicant that (i) the applicant is eligible to obtain an extended term loan; (ii) information about extended term loans may be found on the poster in the licensee's office or in the "Borrower Rights and Responsibilities" pamphlet; and (iii) the licensee is available to answer any questions that the applicant may have about extended term loans. When providing this notice, the licensee shall also direct the applicant to the specific locations of both the poster referred to in subdivision 1 of this subsection and the section of the pamphlet entitled "Five Payday Loans within 180 days." In addition, if the payday lending database advises a licensee that an applicant is eligible for an extended payment plan, the licensee shall also comply with subdivision C 4 of 10VAC5-200-33.

F. Payday loans made prior to January 1, 2009, shall not be considered for purposes of determining how many loans a borrower obtained in any rolling 180-day period.

10VAC5-200-40. Borrower prepayment; right to cancel.

A. In order to prepay a payday loan in full, a borrower shall only be required to pay the principal amount advanced as well as any accrued and unpaid fees. A borrower shall be permitted to make partial payments, in increments of not less than \$5.00, on the loan at any time without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan.

B. For purposes of the Act and this chapter, the interest and loan fee permitted by subsections A and B of § ~~6-1-460~~ 6.2-1817 of the Code of Virginia shall be deemed accrued on a straight line basis over the term of a payday loan. A licensee shall calculate interest charges using either a 360-day year or a 365-day year. The verification fee permitted by subsection C of § ~~6-1-460~~ 6.2-1817 of the Code of Virginia shall be deemed accrued in full at the time a payday loan is made.

C. 1. A borrower choosing to prepay his payday loan in full shall only be responsible for the verification fee and the pro-rata portion of the total interest and loan fee based upon the number of days that have elapsed between the loan disbursement date and the date of repayment. (For example, if a \$400 loan with a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a term of 28 days, and a

360-day year is prepaid in full after seven days, the borrower shall only be required to pay in cash or good funds instrument \$427.80 (\$400 + \$2.80 interest + \$20 loan fee + \$5.00 verification fee) to the licensee.)

2. A borrower choosing to make partial payments on a payday loan shall only be responsible for the verification fee and the pro-rata portion of the total interest and loan fee based upon the timing and amount of such partial payments. (For example, given a \$500 loan with a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a term of 31 days, and a 360-day year, a borrower making a partial payment of \$200 after 15 days shall only be required to pay a total of \$603.91 to the licensee (\$500 principal + \$103.91 interest and fees). In this example, \$60.89 of the borrower's \$200 partial payment would be applied toward interest (\$7.50) and fees (\$48.39 loan fee + \$5.00 verification fee) and the remaining \$139.11 would be applied toward principal, thereby resulting in an outstanding balance of \$360.89 until maturity. Based on this outstanding balance, the charges for the remainder of the term are \$5.77 (interest on \$360.89 for 16 days) + \$37.25 (loan fee on \$360.89 prorated for 16 days).)

D. If a borrower enters into an extended payment plan and subsequently elects to prepay it in full, the borrower shall only be responsible for the verification fee, any interest that accrued prior to the borrower entering into the extended payment plan, and the pro-rata portion of the total loan fee based upon the number of days that have elapsed between the loan disbursement date and the date the loan would have been due if the borrower had not entered into the extended payment plan. The total payoff amount shall be reduced by the amount of any installment payments made by the borrower prior to prepaying the extended payment plan in full.

1. Example: Assume that a borrower who is paid on a semimonthly basis (minimum term of 31 days) obtains a \$500 loan on April 1 with an extended payment plan, an extended payment plan term of 60 days, no interest (interest does not accrue during the term of an extended payment plan), a 20% loan fee, a \$5.00 verification fee, and installment payments of \$151.25 due on April 16, May 1, May 16, and May 31. Since the borrower is paid on a semimonthly basis, the loan fee shall accrue over a period of 31 days. If the borrower prepays the extended payment plan in full on April 21, the borrower shall only be required to pay in cash or good funds instrument the principal (\$500), a pro-rata portion of the loan fee (\$64.52), and the verification fee (\$5.00) for a total of \$569.52 to the licensee. If the borrower made an installment payment of \$151.25 on April 16, the payoff amount on April 21 would be \$418.27 (\$569.52 - \$151.25).

2. Example: Assume that a borrower who is paid on a semimonthly basis obtains a \$500 loan on April 1 with a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a term of 31 days, and a 360-day year. Next assume that the borrower elects an extended payment plan on April 23 with a term of 60 days and installment payments of \$154 due on May 8, May 23, June 7, and June 22. If the borrower prepays the extended payment plan in full on June 2, the borrower shall only be required to pay in cash or good funds instrument the principal (\$500), the interest that accrued prior to the borrower electing an extended payment plan (\$11), the entire loan fee (\$100), and the verification fee (\$5.00) for a total of \$616 to the licensee. If the borrower made installment payments of \$154 on both May 8 and May 23, the payoff amount on June 2 would be \$308 (\$616 - \$154 - \$154).

E. If a borrower enters into an extended term loan and subsequently elects to prepay it in full, the borrower shall only be responsible for the verification fee and the pro-rata portion of the total interest and loan fee based upon the number of days that have elapsed between the loan disbursement date and the loan maturity date (i.e., the date the fourth installment is due). The total payoff amount shall be reduced by the amount of any installment payments made by the borrower prior to prepaying the extended term loan in full.

Example: Assume that a borrower obtains a \$500 extended term loan on April 1 with a simple annual interest rate of 36%, a 20% loan fee, a \$5.00 verification fee, a 360-day year, a 60-day term, and installment payments of \$158.75 due on April 16, May 1, May 16, and May 31. If the borrower prepays the extended term loan in full on May 20, the borrower shall only be required to pay in cash or good funds instrument the principal (\$500), the interest that accrued for 49 days (\$24.50), a pro-rata portion of the loan fee (\$81.67), and the verification fee (\$5.00) for a total of \$611.17 to the licensee. If the borrower made installment payments of \$158.75 on April 16, May 1, and May 16, the payoff amount on May 20 would be \$134.92 (\$611.17 - \$158.75 - \$158.75 - \$158.75).

F. Unless it results in the prepayment in full of an extended payment plan or extended term loan pursuant to subsection D or E of this section, a partial payment, excess payment, installment payment, or other payment received by a licensee in advance of the date the funds are due under the terms of the extended payment plan or extended term loan shall not result in a modification of the payment schedule or a pro-rata adjustment of the total interest, if any, or loan fee. Payments made by a borrower pursuant to an extended payment plan or extended term loan shall be first applied to any past due installment and then to the next regularly scheduled installment.

G. Notwithstanding any provision of this section, a borrower shall have the right to cancel a payday loan (including an

extended term loan or a loan repayable by means of an extended payment plan) at any time before the close of business on the next business day following the date of the loan by paying to the licensee, in the form of cash or good funds instrument, the principal amount advanced to the borrower. The licensee shall not be entitled to charge or receive any interest or fees, including a verification fee, when a borrower cancels a payday loan.

10VAC5-200-50. Responding to requests from the Bureau of Financial Institutions.

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

B. Requests made by the bureau pursuant to subsection A are deemed to be in furtherance of the bureau's investigation and examination authority provided for in § ~~6-1-456~~ 6.2-1813 of the Code of Virginia. Failure to comply with subsection A may result in fines, license suspension, or license revocation.

10VAC5-200-70. Additional business requirements and restrictions.

A. A licensee shall conspicuously post in its licensed locations the days and hours during which it is open for business.

B. A licensee shall not deposit or otherwise present for payment more than two times any check given by a borrower as security for a loan, and in no event shall a licensee recover from a borrower more than a total of \$25 attributable to returned check fees incurred by the licensee with respect to a single check.

C. A licensee shall not knowingly make a payday loan to a member of the military services of the United States, or the spouse or other dependent of a member of the military services of the United States. To enable a licensee to make this determination, a licensee shall clearly and conspicuously include the following questions in its written loan application, which the licensee shall require each applicant to answer before obtaining a payday loan. A licensee shall not make a

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payday loan to an applicant unless the applicant answers "no" to all of these questions:

1. Are you a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer?
2. Are you married to a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer?
3. Are you under the age of 18 and the son or daughter of a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer?
4. Was more than one-half of your financial support for the past 180 days provided by a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer?

D. A licensee shall maintain in its licensed offices such books, accounts, and records as the Commissioner of Financial Institutions may reasonably require in order to determine whether such licensee is complying with the provisions of the Act and all rules and regulations adopted in furtherance thereof. Such books, accounts, and records shall be maintained apart and separate from those relating to any other business in which the licensee is involved. Such records relating to loans, including loan applications, shall be retained for at least three years after final payment is made on any loan.

E. A licensee shall report, in accordance with § ~~6.1-455~~ 6.2-1812 of the Code of Virginia, the institution of an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia) by the Attorney General or any other governmental authority.

F. A licensee shall endeavor to provide the loan documents, printed notice, and pamphlet required by 10VAC5-200-30, in a language other than English when a prospective borrower is unable to read the materials printed in English.

G. A licensee shall not file or initiate a legal proceeding against a borrower until 60 days after the date of default on a payday loan, including defaults under extended payment plans or extended term loans, during which time the licensee and borrower may voluntarily enter into a repayment arrangement.

H. Nothing in the Act or this chapter shall be construed to prohibit a licensee from voluntarily accepting a payment on an outstanding loan from a borrower after the date that such

payment was due to the licensee. However, except as otherwise permitted by the Act and this chapter, the licensee shall not collect, receive, or otherwise recover any additional interest, fees, or charges from the borrower.

10VAC5-200-75. Annual reporting requirements.

When making the annual report required by § ~~6.1-454~~ 6.2-1811 of the Code of Virginia, in addition to other information required by the commissioner, licensees shall provide the following data:

1. The total number and dollar amount of payday loans made.
2. The total number of individual borrowers to whom loans were made.
3. The minimum, maximum, and average dollar amount of payday loans made.
4. The average annual percentage rate, and range of annual percentage rates, charged on payday loans made.
5. The average number of days, and the range of number of days, of the term of payday loans made.
6. The total number and dollar amount of borrower checks returned unpaid by the drawee depository institution.
7. The total number and dollar amount of returned checks ultimately paid.
8. The total number and dollar amount of returned checks charged off as uncollectible.
9. The total number and dollar amount of returned check fees collected from borrowers whose checks are returned for insufficient funds.
10. The total number of individual borrowers against whom lawsuits were instituted.
11. The number of individual borrowers who received more than one loan but less than 13 loans, and the number of individual borrowers who received 13 loans or more.

10VAC5-200-110. Payday lending database.

A. This section sets forth the rules applicable to the payday lending database referred to in § ~~6.1-453.1~~ 6.2-1810 of the Code of Virginia.

B. Except as otherwise provided in this section, a licensee shall transmit all information to the database via the Internet. In order to maintain the confidentiality and security of the information, a licensee shall not transmit information to the database using publicly accessible computers, computers that are not under the licensee's control, unsecured wireless (Wi-Fi) connections, or other connections that are not secure. A licensee shall maintain generally accepted security safeguards to protect the confidentiality of the information transmitted to the database, including but not limited to installing and

regularly updating malware protection (antivirus and antispyware) software and a firewall.

C. Prior to making a payday loan, a licensee shall transmit the following information to the database for purposes of determining whether an applicant is eligible for a payday loan. The licensee shall obtain the applicant information required by this subsection in accordance with the provisions of subsection D of this section.

1. Name of licensee and license number.
2. Office location of licensee.
3. First and last name or identification number of employee entering information into the database.
4. Applicant's first and last name.
5. Last four digits of applicant's driver's license number or identification card number.
6. Applicant's address.
7. Applicant's date of birth.

D. 1. A licensee shall obtain the information required by subdivisions C 4, 5, 6, and 7 of this section directly from the applicant's unexpired original driver's license or identification card issued by a state driver's licensing authority (e.g., Department of Motor Vehicles for the Commonwealth of Virginia), regardless of whether the information on the driver's license or identification card is still accurate. A licensee shall not accept photocopies, facsimiles, or other reproductions of a driver's license or identification card.

2. A licensee shall photocopy the applicant's driver's license or identification card, partially redact the driver's license number or identification card number so that only the last four digits of the number remain visible, and retain the redacted photocopy in its records.

3. A licensee shall not accept a driver's license or identification card from an applicant when there is reason to believe that (i) it belongs to an individual other than the applicant or (ii) it is fake, counterfeit, or has been altered, fraudulently obtained, forged, or is otherwise nongenuine or illegitimate.

E. If the database advises a licensee that an applicant is ineligible for a payday loan, then the licensee shall inform the applicant of his ineligibility, instruct the applicant to contact the database provider for information about the specific reason for his ineligibility, and provide the applicant with the toll-free telephone number of the database provider.

F. If the database advises a licensee that an applicant is eligible for a payday loan, then the licensee shall transmit the following additional information to the database prior to making a payday loan:

1. Application date.

2. Loan number.
3. Date of loan.
4. Principal amount of loan.
5. Interest rate.
6. Dollar amount of interest to be charged until date of loan maturity.
7. Dollar amount of loan fee to be charged.
8. Dollar amount of verification fee to be charged.
9. Dollar amount of total finance charges.
10. Annual Percentage Rate (APR) of loan.
11. Number of days in applicant's pay cycle.
12. Number of days in loan term.
13. Date loan is due.
14. Dollar amount of check given by applicant to secure the loan (i.e., at the time the loan is made).

G. If the database advises a licensee that an applicant is eligible for an extended payment plan or extended term loan and the applicant subsequently elects an extended payment plan or extended term loan, then the licensee shall transmit the following additional applicable information to the database no later than the time the licensee closes for business on the date the applicant enters into the extended payment plan or extended term loan:

1. Date the extended payment plan or extended term loan is entered into.
2. Principal amount owed under the extended payment plan or extended term loan.
3. Number of installment payments and the amount of each payment to be made under the extended payment plan or extended term loan.
4. Date each installment payment is due under the extended payment plan or extended term loan.
5. Number of days in term of extended payment plan or extended term loan.

H. For purposes of this section, a licensee closes for business when it officially shuts its doors to the general public on a business day, or within one hour thereafter.

I. A licensee shall generate a separate printout from the database showing the results of each loan eligibility query, including whether an applicant is eligible for an extended payment plan or extended term loan, and retain the printout in its loan records.

J. Except as otherwise provided in subdivisions 3, 7, and 8 of this subsection, a licensee shall transmit the following additional information, as applicable, to the database no later

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than the time the licensee closes for business on the date of the event:

1. If a borrower cancels a payday loan, the date of the cancellation.
2. If a payday loan (including an extended term loan or a loan that a borrower elected to repay by means of an extended payment plan) is repaid or otherwise satisfied in full, (i) the date of repayment or satisfaction, and (ii) the total net dollar amount ultimately paid by the borrower in connection with the loan (i.e., principal amount of loan plus all fees and charges received or collected pursuant to §§ ~~6.1-460~~ 6.2-1817 and ~~6.1-461~~ 6.2-1818 of the Code of Virginia, less any amount refunded to the borrower as a result of overpayment).
3. If a check used to repay a loan in full is returned unpaid, the date the check is returned unpaid and the dollar amount of the check. A licensee shall transmit such information to the database no later than five calendar days after the date the check is returned unpaid.
4. If a licensee collects a returned check fee from a borrower, the dollar amount of the returned check fee.
5. If a licensee initiates a legal proceeding against a borrower for nonpayment of a payday loan, the date the proceeding is initiated and the total dollar amount sought to be recovered.
6. If a licensee obtains a judgment against a borrower, the date and total dollar amount of the judgment.
7. If a judgment obtained by a licensee against a borrower is satisfied, the date of satisfaction. A licensee shall transmit such information to the database on the date the licensee learns that the judgment has been satisfied.
8. If a licensee collects any court costs or attorney's fees from a borrower, the dollar amount of the court costs or attorney's fees. A licensee shall transmit such information to the database on the date the licensee learns that the court costs or attorney's fees have been paid.
9. If a licensee charges off a payday loan as uncollectible, the date the loan is charged off and the total dollar amount charged off.

K. 1. If any information required to be transmitted by a licensee to the database is automatically populated or calculated by the database provider, the licensee shall verify the information and immediately correct any inaccuracies or other errors.

2. If a licensee becomes aware of any changes, inaccuracies, or other errors in the information previously verified or transmitted by the licensee to the database, the licensee shall immediately update or correct the database.

L. The following provisions address a licensee's inability to access the database via the Internet at the time of loan application:

1. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall to the extent possible use the database provider's alternative means of database access, such as a telephone interactive voice response system, for purposes of transmitting the information required by this section and obtaining applicant eligibility information from the database.

2. If a licensee makes a payday loan based on applicant eligibility information obtained from the database provider's alternative means of database access, then the licensee shall transmit to the database any remaining information required by this section no later than the time the licensee closes for business on the date that the database becomes accessible to the licensee via the Internet.

3. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control and the database provider's alternative means of database access is unavailable or otherwise unable to provide the licensee with applicant eligibility information (including eligibility for an extended payment plan or extended term loan), then the licensee may make a payday loan to an applicant if the applicant signs and dates a separate document containing all of the representations and responses to the questions set forth below and the prospective loan otherwise complies with the provisions of the Act and this chapter. The document shall be printed in a type size of not less than 14 point and contain a statement that the representations and questions relate to loans obtained from either the licensee or another payday lender. The licensee shall retain the original document in its loan file and provide the applicant with a duplicate original.

- a. The representations to be made by an applicant are as follows:

- (1) I do not currently have any outstanding payday loans.
- (2) I did not repay or otherwise satisfy in full a payday loan today.
- (3) In the past 90 days I did not repay or otherwise satisfy in full a payday loan by means of an extended payment plan.
- (4) In the past 45 days I did not repay or otherwise satisfy in full a fifth payday loan that was obtained within a period of 180 days.
- (5) In the past 90 days I did not repay or otherwise satisfy in full an extended term loan.

(6) I did not obtain an extended term loan within the past 150 days.

(7) I am not a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

(8) I am not married to a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

(9) I am not under the age of 18 and the son or daughter of a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

(10) One-half or less (including none) of my financial support for the past 180 days was provided by a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

b. The questions to be presented to an applicant are as follows:

(1) In the past 12 months, have you obtained an extended payment plan in order to repay a payday loan? If the applicant's response is "no" and the applicant is eligible for a payday loan, then the licensee shall immediately provide the applicant with the oral notice prescribed in subdivision C 4 of 10VAC5-200-33.

(2) Have you obtained four or more payday loans within the past 180 days? If the applicant's response is "yes" and the applicant is eligible for a payday loan, then the licensee shall immediately provide the applicant with the oral notice prescribed in subdivision E 4 of 10VAC5-200-35.

c. If a licensee makes a payday loan pursuant to subdivision L 3 of this section, then the licensee shall transmit to the database the information required by this section no later than the time the licensee closes for business on the date that the database becomes accessible to the licensee, via either the Internet or the database provider's alternative means of database access.

4. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall document in its records the technical problems it experienced and the date and time that it sought to access the database.

M. The following provisions address a licensee's inability to access the database via the Internet subsequent to making a loan:

1. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall to the extent possible use the database provider's alternative means of database access, such as a telephone interactive voice response system, for purposes of transmitting the information required by this section to the database. If the database provider's alternative means of database access is unavailable or otherwise unable to accept the information, then the licensee shall transmit to the database the information required by this section no later than the time the licensee closes for business on the date that the database becomes accessible to the licensee, via either the Internet or the database provider's alternative means of database access.

2. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall document in its records the technical problems it experienced and the date and time that it sought to transmit the information to the database.

N. By the close of business on each business day, a licensee shall transmit to the database the total daily number (even if 0) of individuals who were unable to obtain payday loans from the licensee because they are members of the military services of the United States or the spouses or other dependents of members of the military services of the United States. If the licensee is unable to access the database due to technical problems beyond the licensee's control, then the licensee shall transmit to the database the information required by this subsection no later than the time the licensee closes for business on the next business day that the licensee is able to access the database. The licensee shall also document in its records the technical problems it experienced and the date and time that it sought to transmit the information to the database.

O. A licensee shall have limited access to the information contained in the database. The database shall only provide a licensee with the following information: (i) whether an applicant is eligible for a new payday loan; (ii) if an applicant is ineligible for a new payday loan, the general reason for the ineligibility (e.g., the database may state that the applicant has an outstanding payday loan but it shall not furnish any details regarding the outstanding loan); and (iii) if an applicant is eligible for a new payday loan, whether the applicant is also eligible for an extended payment plan or extended term loan. The database shall also permit a licensee to access

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information that the licensee is required to transmit to the database provided that such access is for the sole purpose of verifying, updating, or correcting the information. Except as otherwise provided in this subsection, a licensee shall be prohibited from accessing or otherwise obtaining any information contained in or derived from the database.

P. If the Commissioner of Financial Institutions determines that a licensee has ceased business but still has one or more outstanding payday loans that cannot be repaid due to the licensee's closure, the Commissioner of Financial Institutions may authorize the database provider to mark the outstanding loans as satisfied in the database in order to enable the affected borrowers to obtain payday loans in the future.

Q. 1. Except as provided in subsection F of 10VAC5-200-35, payday loans made on or after October 1, 2008, and prior to January 1, 2009, that remain outstanding on January 1, 2009, shall be considered for purposes of determining a borrower's eligibility for a payday loan. Accordingly, on or before January 1, 2009, a licensee shall transmit the following information to the database in connection with every payday loan made on or after October 1, 2008, that will or may be outstanding as of January 1, 2009:

- a. Name of licensee and license number.
- b. Office location of licensee.
- c. First and last name or identification number of employee entering information into the database.
- d. Borrower's first and last name.
- e. Last four digits of borrower's driver's license number or identification card number.
- f. Borrower's address.
- g. Borrower's date of birth.
- h. Date loan funds were disbursed.
- i. Date loan is due.

2. A licensee shall obtain and retain the borrower information required by this subsection in accordance with the provisions of subsection D of this section.

3. For every payday loan made on or after October 1, 2008, that remains outstanding as of January 1, 2009, a licensee shall transmit to the database all applicable information required by subsection J of this section within the time prescribed therein or January 1, 2009, whichever is later.

10VAC5-200-115. Database inquiry fee.

Pursuant to subdivision B 4 of § ~~6-1-453.1~~ 6.2-1810 of the Code of Virginia, a licensed payday lender shall pay a database inquiry fee to the database provider in connection with every payday loan consummated by the licensee. The amount of the database inquiry fee shall not exceed \$5.00 per

loan, which shall be remitted by each licensee directly to the database provider on a weekly basis.

10VAC5-200-120. Enforcement.

A. Failure to comply with any provision of the Act or this chapter may result in fines, license suspension, or license revocation.

B. Pursuant to § ~~6-1-467~~ 6.2-1824 of the Code of Virginia, a licensee shall be subject to a separate fine of up to \$1,000 for every violation of the Act, this chapter, or other law or regulation applicable to the conduct of the licensee's business. If a licensee violates any provision of the Act, this chapter, or other law or regulation applicable to the conduct of the licensee's business in connection with multiple loans or borrowers, the licensee shall be subject to a separate fine for each loan or borrower. For example, if a licensee makes five loans and the licensee violates two provisions of this chapter that are applicable to the five loans, the licensee shall be subject to a maximum fine of \$10,000.

C. If a licensee (i) fails to transmit information to the payday lending database in accordance with the Act or 10VAC5-200-110, (ii) transmits incorrect information to the database, or (iii) transmits information to the database in an untimely manner, the licensee shall be subject to a separate fine under § ~~6-1-467~~ 6.2-1824 of the Code of Virginia for each item of data that is omitted, incorrect, or untimely. For example, if a licensee makes three loans and fails to transmit two items of information to the database in connection with each of the three loans, the licensee shall be subject to a maximum fine of \$6,000.

VA.R. Doc. No. R12-2586; Filed May 3, 2012, 3:06 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Title of Regulation: 12VAC30-120. Waivered Services (amending 12VAC30-120-1600 through 12VAC30-120-1660; adding 12VAC30-120-1605, 12VAC30-120-1670, 12VAC30-120-1680).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: July 5, 2012.

Agency Contact: Steve Ankiel, Long Term Care Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-8894, FAX (804) 371-4986, or email steve.ankiel@dmas.virginia.gov.

Summary:

This regulatory action updates the Alzheimer's Assisted Living Waiver to accommodate changes in the industry and clarify the regulations. These changes bring current Department of Social Services' licensing standards and Department of Medical Assistance Services' waiver expectations more in sync with each other while reducing provider confusion and duplication of effort.

The amendments clarify clinical staff requirements, the number of activity hours, and who is permitted to provide supervision. Initiation of these changes is expected to increase the available provider pool and enhance participation in the waiver by eligible recipients. Changes made in the final stage are nonsubstantive and clarifying to incorporate some terms appropriate to person centered planning.

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

12VAC30-120-1600. Definitions.

The following words or terms when used in this regulation shall have the following meanings unless the content clearly indicates otherwise.

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining [the] appropriate level of care and service needs.

"Administrator" means the person who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

~~"Admissions summary" means the Virginia Uniform Assessment Instrument and other relevant social, psychological, and medical information gathered by the assisted living facility staff for use in the development and updates of the [plan of care individual service plan].~~

~~"Alzheimer's" means a diagnosis of Alzheimer's as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV-TR), published by the American Psychiatric Association.~~

~~"Alzheimer's and Related Dementias Assisted Living Waiver" or "AAL Waiver" means the CMS-approved waiver that covers a range of community support services offered to individuals who have a diagnosis of Alzheimer's or a related dementia who meet nursing facility level of care.~~

~~"Americans with Disabilities Act" or "ADA" means the United States Code pursuant to 42 USC § 12101 et seq., as amended.~~

~~"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.~~

~~"Assisted living facility" means a congregate residential setting as defined in § 63.2-100 of the Code of Virginia.~~

~~"Auxiliary Grant Program" means a state and locally funded assistance program to supplement the income of [a an individual who receives] Supplemental Security Income (SSI) [recipient] or an adult who would be eligible for SSI except for excess income and who [resides lives] in a licensed assisted living facility with an approved rate.~~

~~"Barrier crime" means those crimes as defined in § 32.1-162.9:1 of the Code of Virginia.~~

~~"Comprehensive assessment" means the Virginia Uniform Assessment Instrument and other relevant social, psychological and medical information gathered by the assisted living facility staff for use in the development and updates of the plan of care.~~

~~"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.~~

~~["Designated preauthorization or service contractor" means DMAS or the entity that has been contracted by DMAS to perform preauthorization of services or service authorizations.]~~

~~"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic or other "cold call"~~

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marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or family/caregiver for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DSS" means the Virginia Department of Social Services.

"Enrolled provider" means an entity that is either licensed or certified by the appropriate state agency that also meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

~~["Designated preauthorization contractor" means DMAS or the entity that has been contracted by DMAS to perform preauthorization of services.]~~

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the CMS pursuant to § 1915(c) of the Social Security Act to be offered to persons who are elderly or disabled who would otherwise require the level of care provided in a nursing facility. DMAS or the designated ~~[preauthorization~~ preauthorization/service authorizations] contractor shall only give ~~[preauthorization~~ preauthorization/service authorization] for medically necessary Medicaid-reimbursed home and community care.

"Individual" means the person receiving the services established in these regulations and who (i) meets the eligibility criteria for residing in a safe, secure environment as described in 22VAC40-72-10; (ii) meets the eligibility criteria for the AAL Waiver; and (iii) resides in a safe, secure environment of an assisted living facility.

["Individual service plan" means the written individual plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety while living in the assisted living facility.

"Legally authorized representative" means a person legally responsible for representing or standing in the place of an individual for the conduct of the individual's affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the individual

as his agent in a legal document that specifies the scope of the representative's authority to act. A legally authorized representative may only represent or stand in the place of the individual for the function or functions for which he has legal authority to act.]

"Licensed health care professional" or "LHCP" means any health care professional currently licensed by the relevant health regulatory board of the Department of Health Professions of the Commonwealth who is practicing within the scope of his license.

~~"Participating provider" means an entity that meets the standards and requirements set forth by DMAS, and has a current, signed provider participation agreement with DMAS.~~

~~["Plan of care" means the written plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety while remaining in the assisted living facility.]~~

"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screening; (ii) assist individuals in determining what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) refer individuals to the appropriate provider for Medicaid-funded nursing facility or home and community-based care for those individuals who meet nursing facility level of care.

"Preadmission screening team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to § 32.1-330 of the Code of Virginia.

"Related dementia" means a diagnosis of Dementia of the Alzheimer's Type as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV-TR), published by the American Psychiatric Association.

~~"Resident" means any individual who (i) meets the eligibility criteria for residing in a safe, secure environment as described in 22VAC40-71-700 C 1; (ii) meets eligibility criteria for the AAL Waiver; and (iii) resides in a safe, secure environment of an assisted living facility.~~

"Safe, secure environment" means a self-contained special care unit as defined in ~~22VAC40-71-10~~ 22VAC40-72-10.

"State Plan for Medical Assistance" or "Plan" means the ~~[regulations~~ Commonwealth's legal document approved by the Centers for Medicare and Medicaid Services] identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Virginia Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that is completed by the preadmission screening team, [in a face-to-

face meeting with the individual and legally authorized representative, as may be appropriate,] which assesses an individual's physical health, mental health, [and] social [;] and functional abilities to determine if the individual meets the level of care for certain publicly funded long-term care programs such as nursing facility services.

12VAC30-120-1605. Waiver description and legal authority.

This Alzheimer's waiver operates under the authority of § 1915 (c) of the Social Security Act and 42 CFR 430.25(c)(2), which permit the waiver of certain State Plan requirements. These federal statutory and regulatory provisions permit the establishment of Medicaid waivers to afford the states with greater flexibility to devise different approaches to the provision of long-term care services. This particular waiver provides [Medicaid recipients eligible individuals] who have a diagnosis of Alzheimer's or related dementias with supportive services to enable such individuals to remain in their communities.

12VAC30-120-1610. Individual eligibility requirements.

A. Waiver service population. The AAL Waiver shall be available through a § 1915(c) of the Social Security Act waiver to eligible aged and disabled [~~auxiliary grant recipients~~ Auxiliary Grant individuals] who [~~reside live~~] in licensed assisted living facilities.

B. Eligibility criteria. To qualify for AAL Waiver services, individuals must meet all of the following criteria:

1. The waiver individual must be either:
 - a. Elderly as defined by § 1614 of the Social Security Act; or
 - b. Disabled as defined by § 1614 of the Social Security Act.
2. The waiver individual must meet the criteria for admission to a nursing facility as determined by a preadmission screening team using the full UAI.
3. The waiver individual must have a diagnosis of Alzheimer's or a related dementia as diagnosed by a licensed clinical psychologist or a licensed physician. The individual may not have a diagnosis of mental [~~retardation~~ retardation/intellectual disability] as defined by the American Association on ~~Mental Retardation in Mental Retardation Intellectual and Developmental Disabilities [; User's Guide Mental Retardation: Definition, Classifications Classification and Systems of Supports, 10th Edition~~], or a serious mental illness as defined in 42 CFR 483.102(b).
4. The waiver individual must be receiving an [~~auxiliary grant~~ Auxiliary Grant], and [~~residing living~~] in or seeking admission to a safe, secure unit of a ~~DMAS approved~~ DMAS-enrolled assisted living facility.

C. Assessment. Medicaid will not pay for any AAL Waiver services delivered prior to the date of the preadmission screening by the preadmission screening team and the physician signature on the Medicaid-Funded Long-Term Care Services Authorization Form (DMAS-96). Medicaid will not pay for any AAL Waiver services delivered prior to the individual's establishment effective date of Medicaid eligibility [and qualification for an Auxiliary Grant].

D. Enrollment. ~~After an initial 60 day application period and a random selection process to determine the order in which eligible individuals will be served by this waiver~~ For the enrollment of all CMS-approved waiver slots, individuals will be served [handled reviewed] on a first-come, first-served basis in accordance with available waiver funding. If there is not a waiver slot available for an individual, the individual shall be placed on the waiting list. Individuals must meet all waiver eligibility criteria in order to be placed on the waiting list. [Individuals must meet all waiver eligibility criteria in order to be placed on the waiting list.]

E. Preauthorization. Before a provider can bill DMAS for AAL Waiver services, preauthorization must be obtained from DMAS. Providers must submit all required information to the designated preauthorization contractor within 10 business days of initiating care. If the provider submits all required information to the designated preauthorization contractor within 10 business days of initiating care, services may be authorized beginning from the date the provider initiated services but not preceding the date of the physician's signature on the Medicaid-Funded Long-Term Care Services Authorization Form (DMAS-96). If the provider does not submit all required information to either the designated preauthorization contractor or DMAS within 10 business days of initiating care, the services may be authorized beginning with the date all required information was received by the designated preauthorization contractor, but in no event preceding the date of the preadmission screening team physician's signature on the DMAS-96.

F. Review of the waiver individual's level of care. DMAS conducts this review based on the documentation submitted by the provider. The level of care assessments are performed to ensure that individuals receiving services in the waiver continue to meet the criteria for the waiver.

G. Termination of services. In the case of termination of AAL Waiver services by DMAS, waiver individuals shall be notified of their appeal rights pursuant to 12VAC30-110, Eligibility and Appeals. DMAS may terminate AAL Waiver [~~care~~] services for any of the following reasons:

1. The AAL Waiver is no longer required to prevent or delay institutional placement;
2. The waiver individual is no longer eligible for Medicaid;
3. The waiver individual is no longer eligible to receive an auxiliary grant;

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4. The waiver individual no longer meets AAL Waiver criteria;
5. The waiver individual has been absent from, or has not received services from, the assisted living facility for more than 30 consecutive days;
6. The waiver individual's environment does not provide for his health, safety, and welfare; or
7. The assisted living facility no longer meets safe and secure licensing standards set by ~~VDSS~~ DSS or standards set by DMAS for service providers.

12VAC30-120-1620. Covered services.

A. Assisted living services include personal care ~~and~~ services, homemaker, chore, attendant care, and companion services. This service includes 24-hour on-site response staff to meet scheduled or unpredictable needs in a way that promotes maximum dignity and independence, and to provide supervision, safety and security.

B. For purposes of these regulations, assisted living services shall also include:

1. Medication administration. Medications shall be administered only by ~~an individual a~~ [provider provider's] employee who is currently licensed [or registered] to administer medications ~~[(physician, (for example: physician,] physician assistant, pharmacist, nurse practitioner, [RN,] or LPN), [LPN,] licensed health care professional (LHCP), or registered medication [aide aide)], except on the 11 p.m. to 7 a.m. shift when medications may be administered by a medication aide that [who] meets [by meeting] the regulatory requirements as set forth by the Department of Social Services DSS and the Board of Nursing appropriate licensing board of the Department of Health Professions in the Commonwealth;~~
2. Nursing evaluations. Individual summaries. The ~~RN LHCP~~ must complete ~~a comprehensive assessment an admissions summary~~ of each ~~resident individual~~ upon admission to the facility and when a significant change in health status or behavior occurs in one of the following areas: weight loss, elopements, behavioral symptoms, or adverse reactions to prescribed medication. A ~~RN LHCP~~ shall identify ~~resident individual~~ care problem areas and formulate interventions [, to the extent permitted by his license,] to address those problems and to evaluate [, to the extent permitted by his license,] if the planned interventions were successful;
3. [Skilled nursing services. LHCP services] Skilled nursing [LHCP] services are nursing services that are used to complete ~~resident assessments~~ individual summaries and administer medications, and provide training, consultation, and oversight of direct care staff. Skilled nursing [LHCP] services must be provided by a ~~RN or by a LPN under the supervision of a RN LHCP who~~

is licensed to practice in the state and provided in accordance and within the scope of practice specified by state law; and

4. Therapeutic social and recreational programming. An activity program must be designed to meet the ~~individual specific~~ needs of each ~~resident waiver individual~~ and to provide daily activities appropriate to [residents individuals] with Alzheimer's or related dementia.

- a. This program shall be individualized and properly implemented, followed, and reviewed as changes are needed.
- b. ~~Residents~~ Waiver individuals who have wandering behaviors shall have an activity program to address these behaviors.
- c. ~~[There Consistent with 22VAC40-72-1100, there] shall be [a minimum of] 19 [16 hours of planned] group [programming structured group activities] each week, not to include activities of daily living. ~~d. Each resident must receive [As part of these 16 hours, there] shall be~~ at least one hour of one-on-one activity per week, not to include activities of daily living. ~~This activity must be provided exclusively by activities staff. Such one-on-one activities may be rendered by such licensed or volunteer staff as determined appropriate by the provider.~~~~
- e. ~~d.~~ Group activities must be provided by staff assigned responsibility for the activities.

12VAC30-120-1630. General requirements for [participating enrolled] providers.

A. Requests for participation will be screened by DMAS to determine whether the provider applicant meets the requirements for participation. Requests for participation must be accompanied by verification of the facility's current licensure from ~~VDSS~~ DSS.

B. For DMAS to approve provider agreements with AAL Waiver providers, providers must meet staffing, financial solvency, and disclosure of ownership requirements.

1. ~~Approved~~ Enrolled providers must assure freedom of choice to individuals, or their [legally] authorized representative, in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services are performed;
2. ~~Approved~~ Enrolled providers must assure the individual's freedom to refuse medical care, treatment, and services;
3. ~~Approved~~ Enrolled providers must accept referrals for services only when staff is available to initiate and perform such services on an ongoing basis;

4. ~~Approved~~ Enrolled providers must provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000 et seq.), which prohibits discrimination on the grounds of race, color, religion, or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973 (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities ~~in the areas of employment, public accommodations, state and local government services, and telecommunications;~~

5. ~~Approved~~ Enrolled providers must provide services and supplies to individuals of the same quality as are provided to the general public;

6. ~~Approved~~ Enrolled providers must submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by DMAS beginning with the individual's authorization date for the waiver services;

7. ~~Approved~~ Enrolled providers must use only DMAS-designated forms for service documentation. The provider must not alter the DMAS forms in any manner unless approval from DMAS is obtained prior to using the altered forms. If there is no designated DMAS form for service documentation, the provider must include all elements required by DMAS in the provider's service documentation;

8. ~~Approved~~ Enrolled providers must use DMAS-designated billing forms for submission of charges;

9. ~~Approved~~ Enrolled providers must perform no direct marketing activities to Medicaid individuals;

10. ~~Approved~~ Enrolled providers must maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided;

a. In general, such records shall be retained for at least six years from the last date of service or as provided by applicable state laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise. The storage location, as well as the agent or trustee, shall be within the Commonwealth;

11. ~~Approved~~ Enrolled providers must furnish information on request and in the form requested, to DMAS, the Office of the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement;

12. ~~Approved~~ Enrolled providers must disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to [~~recipients of~~ individuals receiving] Medicaid;

13. Pursuant to 42 CFR § 431.300 et seq., 12VAC30-20-90, and any other applicable federal or state law, all providers shall hold confidential and use for authorized DMAS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits, or the data is necessary for the functioning of DMAS in conjunction with the cited laws;

14. ~~Approved~~ Enrolled providers must notify DMAS in writing as at least 15 days before ownership or management of the facility changes;

15. Pursuant to § 63.2-1606 of the Code of Virginia, if a participating enrolled provider knows or suspects that an [individual using] AAL Waiver services [~~individual~~] is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation must report this immediately from first knowledge to the local DSS or adult protective services hotline as applicable;

16. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in the individual provider participation agreements and in the applicable DMAS provider manual. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies. A provider's noncompliance with DMAS policies and procedures may result in a retraction of Medicaid payment or termination of the provider agreement, or both;

17. Enrolled providers are responsible for complying with § 63.2-1720 of the Code of Virginia regarding criminal record checks. All employees must have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of [persons who are] incapacitated or older adults ~~and~~ or children. The criminal record check shall be available for review by DMAS staff who are authorized by

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the agency to review these files. DMAS will not reimburse the provider for any services provided by an employee who has committed a barrier crime as defined herein. ~~Providers are responsible for complying with § 63.2-1720 of the Code of Virginia regarding criminal record checks; and~~

18. ~~Approved~~ Enrolled providers must immediately notify DMAS, in writing, of any change in the information that the provider previously submitted to DMAS.

~~C. A provider shall have the right to appeal adverse actions taken by DMAS. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.~~

~~D. C.~~ The Medicaid provider agreement shall terminate pursuant to § 32.1-325 of the Code of Virginia upon conviction of the provider of a felony pursuant to § 32.1-325 of the Code of Virginia. A provider convicted of a felony in Virginia or in any other of the 50 states, the District of Columbia, or the U.S. territories, must, within 30 days of the conviction, notify the Virginia Medicaid Program and relinquish the provider agreement.

~~E. D.~~ Provider's Responsibility responsibility for the Patient Information Form (DMAS-122). Medicaid LTC Communication Form (DMAS-225). It shall be the responsibility of the service provider to notify ~~VDSS~~ DSS and DMAS, in writing, when any of the following circumstances occur:

1. AAL Waiver services are implemented;
2. An individual dies;
3. An individual is discharged from the [provider facility]; or
4. Any other circumstances (including hospitalization) that cause AAL Waiver services to cease or be interrupted for more than 30 days.

~~F. E.~~ Termination of waiver services.

1. In a nonemergency situation, i.e., when the health and safety of the individual or provider personnel is not endangered, the participating provider shall give the individual or family/caregiver, or both, at least 30 days' written notification plus three days for mailing of the intent to discontinue services. The notification letter shall provide the reasons for and the effective date the provider is discontinuing services.

2. In an emergency situation when the health and safety of the individual or provider personnel is endangered, the participating provider must notify DMAS immediately prior to discontinuing services. The written notification period shall not be required. If appropriate, local DSS Adult Protective Services must also be notified immediately.

12VAC30-120-1640. Participation standards for provision of services.

A. Facilities must have a signed provider agreement approved by DMAS to provide AAL Waiver services.

B. The facility must provide a safe, secure environment for waiver [recipients individuals]. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Personalized care must be furnished to individuals who reside in their own living units, with semi-private rooms limited to two [people individuals] and [a maximum of two individuals sharing a bathroom bathrooms consistent with 22VAC40-72-890].

C. [Care Support] in a facility must be furnished in a way that fosters the independence of each individual to [facilitate aging age] in place. Routines of care provision and service delivery must be ~~consumer-driven~~ individual-driven to the maximum extent possible and ~~treat~~ each person individual must be treated with dignity and respect.

D. The medical care of residents individuals must be under the direction and supervision of a licensed physician. This can be the individual's private physician. The facility must ensure that residents have appointments with their physicians at least annually, and additionally as needed as determined by the physician.

E. Administrators.

1. Administrators of participating assisted living facilities must meet the regulatory requirements as set forth by the Virginia Department of Social Services (~~22VAC40-71-60 et seq.~~) (22VAC40-72-191) and the Board of Long-Term Care Administrators (~~18VAC95-20-10 through 18VAC95-20-471~~) [(18VAC95-20) (18VAC95-30)].

2. The administrator shall demonstrate knowledge, skills and abilities in the administration and management of an assisted living facility program including:

- a. Knowledge and understanding of [impaired-elderly older adults who have impairments] or [persons individuals] with disabilities;
- b. Supervisory and interpersonal skills;
- c. Ability to plan and implement the program; and
- d. Knowledge of financial management sufficient to ensure program development and continuity.

3. The administrator shall demonstrate knowledge of supervisory and motivational techniques sufficient to:

- a. Accomplish day-to-day work;
- b. Train, support and develop staff; and
- c. Plan responsibilities for staff to ensure that services are provided to [participants individuals].

4. The administrator shall complete 20 hours of continuing education annually to maintain and develop skills. This training shall be in addition to first aid; and CPR, ~~or and~~ orientation training to be received upon commencement of employment.

F. ~~Nursing staff~~ Licensed health care professional (LHCP) requirements.

1. Each facility shall have at least one ~~registered nurse (RN) or licensed practical nurse (LPN) under the supervision of an RN, LHCP~~ awake, on duty, and on-site in the facility for at least eight hours a day, five days each week ~~and on call 24 hours a day. The person on call must be able to arrive at the facility within one hour.~~ In addition, the facility shall provide for emergency call coverage at all hours of the day and night.

2. The ~~RN~~ LHCP is responsible for staff training, ~~resident assessment individual summaries, [plans of care individual service plans],~~ and medication oversight.

3. ~~Assessments~~ Individuals' summaries.

a. ~~Comprehensive assessment. Admissions summary.~~ An RN LHCP must complete a comprehensive assessment an admissions summary of each resident individual upon admission. The comprehensive assessment admissions summary includes the UAI and other relevant social, psychological, and medical information. The comprehensive assessment admissions summary must also include the physician's assessment information as contained in 22VAC40-71-150 ~~E~~ 22VAC40-72-40 and 22VAC40-72-440. The comprehensive assessment admissions summary must be updated yearly and when a significant change in [an individual's] health status or behavior occurs. The information gathered during the comprehensive assessment preparation of the admissions summary is used to create the resident's individual's [service] plan [of care] as contained in 22VAC40-71-170 ~~C and D~~ 22VAC40-72-40 and 22VAC40-72-440.

b. ~~[Plan of care Individual service plan].~~ Based on the individual resident assessment specific individual's admission summary and the UAI, the RN LHCP, in coordination with other caregivers including the resident's individual's authorized representative [, as may be appropriate,] shall:

- (1) Develop the ~~resident's individual's [service] plan [of care]~~ and formulate interventions to address the specific problems identified;
- (2) Evaluate both the facility's implementation and the ~~resident's individual's~~ response to the plan of care; and
- (3) Review and update the [individual service] plan [of care] at least quarterly and more often when necessary to meet the needs of the ~~resident individual.~~

c. ~~Monthly assessments summary.~~ The RN or an LPN, under the supervision of the RN, LHCP must complete a monthly assessment summary. Significant changes documented on the monthly assessment summary must be addressed in an updated [individual service] plan [of care]. The comprehensive assessment admissions summary information shall also be updated as needed. At a minimum, the monthly assessment contains summary must contain information about the following elements:

- (1) Weight loss;
- (2) Falls;
- (3) Elopements;
- (4) Behavioral [~~symptoms issues~~];
- (5) Adverse reactions to prescribed medications;
- (6) Dehydration;
- (7) Pressure ulcers;
- (8) Fecal impaction;
- (9) Cognitive changes;
- (10) Change in diagnoses; and
- (11) Change in levels of dependence in ADLs.

~~4. In a facility with fewer than 16 waiver recipients, the facility may employ an RN as part time or as a contracted employee.~~

4. The facility's ~~RN~~ LHCP may also serve as the administrator. In all instances where the facility's ~~RN~~ LHCP is assigned duties as an administrator, the facility shall assure that the ~~RN~~ LHCP devotes sufficient time and effort to all clinical duties to secure health, safety, and welfare of ~~recipients individuals.~~

~~Any facility having more than 16 waiver recipients must employ full time an RN to be responsible for the clinical needs of the recipients.~~

G. ~~Unit coordinator.~~

~~1. Facilities must have a unit coordinator, awake and on-site in the unit, who will manage the daily routine operation of the specialty unit.~~

~~2. The unit coordinator must be available to the facility 24 hours a day.~~

~~3. At a minimum, the unit coordinator must be a certified nurse aide (CNA) with at least one year experience in a DMAS approved assisted living facility or nursing home or other setting that involves working with vulnerable adults.~~

~~4. The unit coordinator may be an RN or an LPN who is serving as the assisted living facility's daily nurse, the administrator, or the activities director.~~

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~~5. In the event the unit coordinator is not available, an alternate qualified staff member may serve in this capacity. Each assisted living facility must establish its own written protocol and assure that only qualified staff fulfill this requirement.~~

~~6. In all instances where the facility's RN is assigned other duties as an administrator, unit coordinator, or both, the facility must assure that the RN devotes sufficient time and effort to all clinical duties.~~

~~H. G.~~ Structured activities program. There shall be a designated employee responsible for managing or coordinating the structured activities program. This employee shall be on site in the special care unit at least 20 hours a week, shall maintain personal interaction with the residents and familiarity with their needs and interests, and shall meet at least one of the following qualifications:

1. Be a qualified therapeutic recreation specialist or activities professional;
2. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;
3. Have at least one year full-time work experience within the last five years in an activities program in an adult care setting;
4. Be a qualified occupational therapist or an occupational therapy assistant; or
5. Prior to or within six months of employment, have successfully completed 40 hours of VDSS-approved training.

~~I. Certified nurse aides~~ ~~H. Direct care staff.~~ In order to provide services in this waiver, the assisted living facility must use certified nurse aides (CNA) in the specialty unit at all times staff who comply with 22VAC40-72-250, 22VAC40-72-1110, and 22VAC40-72-1120 in staffing the specialty care unit.

~~J. L.~~ The assisted living facility must have sufficient qualified and trained staff to meet the needs of the [residents individuals living in the facility] at all times.

~~K. J.~~ There must be at least [two one] awake direct care staff in the special care unit at all times and more if dictated by the needs of the [residents individuals living in the special care unit, in accordance with 22VAC40-72-1110].

~~L. K.~~ Training requirements for all staff.

1. All staff who have contact with [residents individuals living in the facility], including the administrator, shall have completed 12 hours of Alzheimer's or related dementia-specific training within 30 days of employment. The training must be conducted by a health care educator, adult education professional, or a licensed professional,

with expertise in Alzheimer's or related dementia. The health care educator, adult education professional, or licensed professional must be acting within the scope of ~~the requirements~~ of his profession, and have had at least 12 hours of training in the [care support] of individuals with cognitive impairments due to Alzheimer's or related dementia prior to performing the training, and have had a minimum of three years experience in the health care or dementia fields. In addition to health care educators and adult education professionals, licensed professionals eligible to conduct this training may include [, but shall not necessarily be limited to]; physicians, psychologists, registered nurses, licensed practical nurses, occupational therapists, physical therapists, speech-language therapists, licensed clinical social workers, or licensed professional counselors.

2. All direct [care support] staff must receive annual training in accordance with 22VAC40-71-630 22VAC40-72-250 and 22VAC40-72-260, with at least eight hours of training in the care of [residents individuals living] with dementia and medical nursing needs. This training may be incorporated into the existing training program and must address the medical nursing needs specific to each [resident individuals living in the facility] in the special care unit. This training must also incorporate problem areas that may include weight loss, falls, elopements, behavioral [symptoms issues], and adverse reactions to prescribed medications. A health care educator, adult education professional or licensed professional with expertise in dementia must conduct this training. ~~The health care educator, adult education professional or licensed professional must be acting within the scope of his profession and have had at least 12 hours of training in the care of individuals with cognitive impairments due to dementia prior to performing the training.~~

3. The individual conducting the training must have at least three years of experience in the health care or dementia care field. In addition to health care educators and adult education professionals, licensed professionals eligible to conduct the training include: physicians, psychologists, registered nurses, occupational therapists, physical therapists, speech/language pathologists, licensed clinical social workers, and licensed professional counselors.

~~M. L.~~ Documentation. The assisted living facility shall maintain the following documentation for review by DMAS staff for each [individual living in the] assisted living [resident facility]:

1. All UAIs, authorization forms, [individual service] plans [of care] and assessments summaries and individuals' admissions completed for the [resident individuals living in the facility shall be] maintained for a period not less than six years from the [recipient's waiver individual's] start of [care service] in that facility;

2. All written communication related to the provision of [~~care services~~] between the facility and the assessor, licensed health care professional, DMAS, VDSS, the [~~recipient waiver individual~~], or other related parties; and
3. A log that documents each day that the [~~recipient waiver individual~~] is present in the facility.

12VAC30-120-1650. Payment for services.

A. DMAS shall pay the facility a per diem fee for each [individual using the] AAL Waiver [~~recipient who has been enrolled in and~~] authorized to receive assisted living services. Except for 14 days of leave each calendar year as described in subsection C of this section, payment of the per diem fee is limited to the days in which the [~~recipient individual~~] is physically present in the facility.

B. The services that are provided as a part of the [auxiliary grant Auxiliary Grant] rate pursuant to 22VAC40-25-40 will not be included for payment from the waiver.

C. Periods of absence from the assisted living facility.

1. An assisted living facility AAL Waiver bed may be held for leave when the ~~resident's individual's~~ [plan of care ISP] provides for such leave. Leave includes visits with relatives and friends or admission to a rehabilitation center for up to seven consecutive days for an evaluation. Leave ~~does~~ shall not include periods of absence due to an admission to a hospital or nursing facility.

2. Leave ~~is~~ shall be limited to 14 cumulative days in any 12-month period. Leave is ~~resident individual~~ specific and is counted from the first occurrence of overnight leave that ~~a resident an individual~~ takes. From that date, [~~a resident an individual~~] has 14 days of leave available during the next 365 days.

3. After the 14 days of leave have been exhausted and during periods of absence due to a hospital or nursing facility admission, the assisted living facility may choose to hold the bed for the ~~resident individual~~, but DMAS ~~will~~ shall not pay for the service. The ~~resident individual~~ or the ~~resident's individual's~~ authorized representative may choose to pay to hold the bed by paying the assisted living facility directly using other funds. The rate shall be negotiated between the ~~resident's individual's~~ authorized representative and the assisted living facility, but shall not exceed the auxiliary grant rate in effect at the time of the ~~resident's individual's~~ absence.

4. During periods of absence for any reason, DMAS shall hold the waiver slot for the ~~resident individual~~ for a total of 30 consecutive days. If the ~~resident's individual's~~ absence exceeds 30 days, DMAS shall terminate AAL Waiver services and assign the slot to the next [person individual] on the waiting list.

12VAC30-120-1660. Utilization review.

A. DMAS shall conduct ~~audits~~ utilization reviews of the services billed to DMAS and interview [~~recipients individuals living in the facility and the legally authorized representative~~] to ensure that services are being provided and billed in accordance with DMAS policies and procedures.

B. [~~DMAS will review all facilities providing conduct quality management reviews of the services provided and interview recipients for all facilities providing services in this waiver on a regular basis to ensure the health and safety in this waiver. On a regular basis, DMAS shall conduct quality management reviews of the services provided and interview individuals for all facilities providing services in this waiver to ensure the individuals' health and safety in this waiver.~~] All quality management and level of care reviews will be performed [~~at least annually~~] and will be performed on site [on a regular basis].

12VAC30-120-1670. Waiver waiting list.

DMAS shall maintain a waiting list for the purpose of individuals' access to this waiver [~~program~~] once all of the currently approved waiver slots have been filled. Individuals must meet all waiver eligibility criteria in order to be placed on the waiting list. Individuals may be removed from the waiting list because: (i) they request that their names be removed; (ii) they [~~expire~~ die]; or (iii) they are placed in an active slot and begin to receive services.

12VAC30-120-1680. Appeals.

A. Providers shall have the right to appeal actions taken by DMAS. Provider appeals shall be considered pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and DMAS regulations at 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

B. Medicaid [~~recipients individuals~~] shall have the right to appeal actions taken by DMAS. Recipient appeals shall be considered pursuant to 12VAC30-110.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-120)

User's Guide: Mental Retardation: Definition, Classification, and Systems of Supports, 10th Edition, 2002, American Association on ~~Mental Retardation~~ Intellectual and Developmental Disabilities.

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DMS-IV-TR), 2000, American Psychiatric Association.

Underwriter's Laboratories Safety Standard 1635, Standard for Digital Alarm Communicator System Units, Third Edition, January 31, 1996, with revisions through August 15, 2005.

Regulations

Underwriter's Laboratories Safety Standard 1637, Standard for Home Health Care Signaling Equipment, Fourth Edition, December 29, 2006.

Part I
General

VA.R. Doc. No. R09-1909; Filed May 3, 2012, 11:27 a.m.



TITLE 13. HOUSING

VIRGINIA MANUFACTURED HOUSING BOARD

Final Regulation

Title of Regulation: 13VAC6-20. Manufactured Housing Licensing and Transaction Recovery Fund Regulations (amending 13VAC6-20-10, 13VAC6-20-20, 13VAC6-20-30, 13VAC6-20-50, 13VAC6-20-60, 13VAC6-20-80, 13VAC6-20-90, 13VAC6-20-100, 13VAC6-20-120, 13VAC6-20-130, 13VAC6-20-140, 13VAC6-20-170, 13VAC6-20-180, 13VAC6-20-190, 13VAC6-20-200, 13VAC6-20-350, 13VAC6-20-460; adding 13VAC6-20-201, 13VAC6-20-202, 13VAC6-20-203, 13VAC6-20-204; repealing 13VAC6-20-250).

Statutory Authority: §§ 36-85.18 and 36-85.36 of the Code of Virginia.

Effective Date: July 4, 2012.

Agency Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, or email steve.calhoun@dhcd.virginia.gov.

Summary:

The amendments (i) add several definitions to clarify regulatory text; (ii) specify that board notices and correspondence will be sent to a licensee's last known address of record; (iii) modify the time frame in which regulated entities may renew their licenses and add a reinstatement period for licensees that fail to renew in a timely manner; (iv) increase all licensure fees; (v) increase the inspection fee that is collected by the Department of Motor Vehicles from \$10 to \$30; and (vi) prohibit regulated entities whose licenses have been revoked, or not renewed for cause, from being licensed under a different name. The proposed amendment to the definition of manufactured home dealer was not adopted.

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

13VAC6-20-10. Definitions.

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

"Board" means the Virginia Manufactured Housing Board.

"Buyer" means the person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

"Claimant" means any person who has filed a verified claim under Chapter 4.2 (§§ (§ 36-85.16 et seq.) of Title 36 of the Code of Virginia.

"Code" means the appropriate standards of the Virginia Uniform Statewide Building Code and the Manufactured Home Safety Regulations adopted by the Board of Housing and Community Development and administered by the Department of Housing and Community Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 USC § 5401 et seq.) for manufactured homes.

"Controlling financial interest" means the direct or indirect ownership or control of a firm.

"Dealer/manufacture sales agreement" means a written contract or agreement between a manufactured housing manufacturer and a manufactured housing dealer whereby the dealer is granted the right to engage in the business of offering, selling, and servicing new manufactured homes of a particular line or make of the stated manufacturer of such line or make. The term shall include any severable part or parts of such sales agreement which separately provides for selling or servicing different lines or makes of the manufacturer.

"Defect" means any deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any failure of any structural element, utility system or the inclusion of a component part of the manufactured home which fails to comply with the Code.

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

"Director" means the Director of the Department of Housing and Community Development, or his designee.

"Fund" or "recovery fund" means the Virginia Manufactured Housing Transaction Recovery Fund.

"HUD" means the United States Department of Housing and Urban Development.

"Imminent safety hazard" means a hazard that presents an imminent and unreasonable risk of death or severe personal

injury that may or may not be related to failure to comply with an applicable federal manufactured home construction or safety standard.

"Licensed" means the regulant has met all applicable requirements of this chapter, paid all required fees, and been authorized by the board to manufacture or offer for sale or sell manufactured homes in accordance with this chapter.

"Manufactured home" means a structure constructed to federal standards, transportable in one or more sections, which, in the traveling mode is eight feet or more in width and is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

"Manufactured home broker" or "broker" means any person, partnership, association or corporation, resident or nonresident, who, for compensation or valuable consideration, sells or offers for sale, buys or offers to buy, negotiates the purchase or sale or exchange, or leases or offers to lease used manufactured homes that are owned by a party other than the broker.

"Manufactured home dealer" or "dealer" means any person engaged in the business of buying, selling or dealing in manufactured homes or offering or displaying manufactured homes for sale in Virginia. Any person who buys, sells, or deals in [three or] more [~~than one new~~] manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

"Manufactured home manufacturer" or "manufacturer" means any persons, resident or nonresident, who manufacture or assemble manufactured homes for sale in Virginia.

"Manufactured home salesperson" or "salesperson" means any person who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a manufactured home dealer to sell or offer to sell; or to buy or offer to buy; or to negotiate the purchase, sale or exchange; or to lease or offer to lease new or used manufactured homes.

"New manufactured home" means any manufactured home that (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been previously occupied as a place of habitation, (iii) has not been previously used for commercial purposes such as offices or storage, and (iv) has not been titled by the Virginia Department of Motor Vehicles and is still in the possession of the original dealer. If the home is later sold to another dealer and then sold to a consumer

within two years of the date of manufacture, the home is still considered new and must continue to meet all state warranty requirements. However, if a home is sold from the original dealer to another dealer and it is more than two years after the date of manufacture, and it is then sold to a consumer, the home must be sold as "used" for warranty purposes. Notice of the "used" status of the manufactured home and how this status affects state warranty requirements must be provided, in writing, to the consumer prior to the closing of the sale.

"Person" means any individual, natural person, firm, partnership, association, corporation, legal representative, or other recognized legal entity.

"Regulant" means any person, firm, corporation, association, partnership, joint venture, or any other legal entity required by Chapter 4.2 (~~§§~~ (§§ 36-85.16 et seq.) of Title 36 of the Code of Virginia to be licensed by the board.

"Regulations" or "these regulations" means the Virginia Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed or license has been revoked or not renewed by the board.

"Relevant market area" means the geographical area established in the dealer/manufacturer sales agreement and agreed to by both the dealer and the manufacturer in the agreement.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association or both; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Responsible party" means a manufacturer, dealer, or supplier of manufactured homes.

"Set-up" means the operations performed at the occupancy site which render a manufactured home fit for habitation. Such operations include, but are not limited to, transportation, positioning, blocking, leveling, supporting, anchoring, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do

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not include lawful transportation services performed by public utilities operating under certificates or permits issued by the State Corporation Commission.

"Standards" means the Federal Manufactured Home Construction and Safety Standards adopted by the U.S. Department of Housing and Urban Development.

"Statement of Compliance" means the statement found on the initial license application and on the renewal application, that the regulant licensed by the board will comply with the Manufactured Housing Licensing and Transaction Recovery Fund Law, this chapter and the orders of the board.

"Substantial identity of interest" means (i) a controlling financial interest by the individual or corporate principals of the manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed for cause by the board or (ii) substantially identical principals or officers as the manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed for cause by the board.

"Supplier" means the original producers of completed components, including refrigerators, stoves, water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, ~~panelling~~ paneling, siding, trusses, and similar materials, which are furnished to a manufacturer or a dealer for installation in the manufactured home prior to sale to a buyer.

"Used manufactured home" means any manufactured home other than a new home as defined in this section.

"Warranty" means any written assurance of the manufacturer, dealer or supplier or any promise made by a regulant in connection with the sale of a manufactured home that becomes part of the basis of the sale. The term "warranty" pertains to the obligations of the regulant in relation to materials, workmanship, and fitness of a manufactured home for ordinary and reasonable use of the home for the term of the promise or assurance.

Part II Licenses

Article 1 Manufacturers

13VAC6-20-20. License required; annual renewal.

A. Each manufacturer located in or outside of the Commonwealth delivering in or shipping into the Commonwealth manufactured homes for sale, shall apply to the board for a license. The license shall be displayed at the place of business in a conspicuous place accessible to the public. The license shall be issued for a term of one year from the date of issuance.

B. Each licensed manufacturer shall apply for license renewal annually, by application and accompanied by the

required fee. Applicants for license renewal shall meet all the criteria for original licensing. Upon failure to renew, the license shall automatically expire.

~~C. Application for renewal of an expired license received by the board within 60 calendar days after the expiration of the license shall require payment of a \$100 penalty by the applicant. Application for renewal received by the board more than 60 calendar days but less than one year from the expiration shall be reviewed by the board. The expired license may be renewed by the board under such additional conditions, warranties or agreements by the applicant as required by the board. Application for renewal more than one year after expiration of a license shall be considered as a new application for a license and shall require payment of all fees and assessments for the new license. When applying for renewal of an expired license, the applicant shall certify to the board that, during the time of license expiration, all activities of the regulant within the scope of this chapter were in compliance with the requirements of this chapter. Upon application and payment of the renewal fee and any penalty by a manufacturer, the board may renew an expired license if satisfactory evidence is presented to it that the applicant has not engaged in business as a manufacturer in Virginia after expiration of the license or agrees to the conditions imposed by the board, and is otherwise eligible for a license under this chapter. Should the department fail to receive a licensed manufacturer's renewal form and appropriate fee within 30 days of the license expiration date, the manufacturer shall be required to reinstate the license according to the terms and conditions of Article 8 (13VAC6-20-201 et seq.) of this part.~~

D. For licensing purposes, a manufacturer operating more than one manufacturing facility shall have each location treated as a separate entity and shall adhere to all requirements for manufacturer licensing at each location, including posting a license at each location. Multiple production lines at one site shall be considered as a single facility for licensing purposes under the following conditions:

1. All production lines at that site are identified by the parent company with the same name, address and plant number.
2. All production lines at that site are under the same general and production management.
3. All production lines at that site are identified by the same Federal Identification Number (FIN) for tax purposes.

13VAC6-20-30. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department and may be submitted as designated in hard copy or by electronic means. All information required on the form shall be furnished by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by 13VAC6-20-420 A 1.
2. Licensing fee required by 13VAC6-20-200 A 1.
3. Copy of the manufacturer's homeowner and installation manual or manuals.
4. Statement of Compliance.
5. List of salespeople licensed in Virginia with the following biographical information for each:

Date of birth

Sex

Weight

Height

Eye/hair color

C. The Department of Housing and Community Development will mail a notice of renewal to the licensee at the last known address of record. Licensees may submit renewals by mail or electronically. Failure to receive this notice shall not relieve the licensee of the obligation to renew. If the licensee does not receive the notice of renewal, a copy of the license may be substituted with the required fee. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by 13VAC6-20-200 A 2.
2. If revised, a copy of the revised homeowner and installation manual or manuals.
3. Statement of Compliance.
4. Updated list of salespeople employed.

Article 2
Dealers

13VAC6-20-50. License required; annual renewal.

A. Any person located in or outside of the Commonwealth buying or selling or offering or displaying manufactured homes for sale in Virginia and meeting the definition of a dealer in 13VAC6-20-10 shall apply to the board for a license. The license shall be displayed in a conspicuous place accessible to the public in the office of the business location. The license shall be issued for a term of one year from the date of issuance.

B. Each licensed dealer shall apply for license renewal annually, by application and accompanied by the required fee. Applicants for license renewal shall meet all the criteria for original licensing. Upon failure to renew, the license shall automatically expire.

~~C. Application for renewal of an expired license received by the board within 60 calendar days after the expiration of the license shall require payment of a \$100 penalty by the applicant. Application for renewal received by the board more than 60 calendar days but less than one year from the expiration shall be reviewed by the board. The expired license may be renewed by the board under such additional conditions, warranties or agreements by the applicant as required by the board. Application for renewal more than one year after expiration of a license shall be considered as a new application for a license and shall require payment of all fees and assessments for a new license. When applying for renewal of an expired license, the applicant shall certify to the board that, during the time of license expiration, all activities of the regulant within the scope of this chapter were in compliance with the requirements of this chapter. Upon application and payment of the renewal fee and any penalty by a dealer, the board may renew an expired license if satisfactory evidence is presented to it that the applicant has not engaged in business as a dealer in Virginia after expiration of the license or agrees to the conditions imposed by the board, and is otherwise eligible for a license under this chapter. Should the department fail to receive a licensed dealer's renewal form and appropriate fee within 30 days of the license expiration date, the dealer shall be required to reinstate the license according to the terms and conditions of Article 8 (13VAC6-20-201 et seq.) of this part.~~

D. For licensing purposes, a dealer operating more than one retail location shall have each location treated as a separate entity and shall adhere to all requirements for dealer licensing including posting a license at each location.

E. Each dealer licensed under this chapter shall also obtain a certificate of dealer registration from the Virginia Department of Motor Vehicles. The certificate of registration shall be renewed annually and shall be maintained in effect with the Department of Motor Vehicles as long as the dealer is licensed under this chapter.

13VAC6-20-60. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department and may be submitted as designated in hard copy or by electronic means. All information required on the form shall be furnished by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by 13VAC6-20-420 A 2.
2. Licensing fee required by 13VAC6-20-200 A 3.
3. Statement of Compliance.

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4. Verification of a business office with all utilities, including a business telephone, and where the required business records are maintained.

5. Verification of a permanent business sign, in view of public traffic, bearing the name of the firm.

6. List of salespeople employed with the following biographical information for each:

Date of Birth

Sex

Weight

Height

Eye/hair color

7. Name of the owner, principal, manager, agent or other person designated as the holder of the dealer's license for the specific location and the names of other partners or principals in the dealership.

Photographs of the front of the business office and required sign may be considered as verification required by this subsection.

C. The Department of Housing and Community Development will mail a notice of renewal to the licensee at the last known address of record. Licensees may submit renewals by mail or electronically. Failure to receive this notice shall not relieve the licensee of the obligation to renew. If the licensee does not receive the notice of renewal, a copy of the license may be substituted with the required fee. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by 13VAC6-20-200 A 4.
2. Statement of Compliance.
3. Notification of any significant changes to the office or the business sign.
4. Updated list of salespeople employed.
5. Any changes of officers or directors of the company or corporation.
6. A copy of the dealer's current certificate of registration from the Department of Motor Vehicles.

D. Any change in the form of ownership of the dealer or any changes (deletions or additions) in the partners or principals of the dealer shall be submitted to the board with an application and fee for a new license. If the new owner or owners assume the liabilities of the previous owner or owners, then a new recovery fund assessment is not required. New recovery fund assessments shall be required when the new owner or owners do not assume the liabilities of the previous owner or owners. The board shall be notified immediately by the dealer of any change in the operating

name of the dealer. The director shall endorse the change on the license without requiring an additional fee. The board shall be notified immediately by the dealer of any change in the location of the dealer. The dealer shall pay a fee of \$50 for the change of location on the license, but shall not be required to pay an additional assessment to the recovery fund for the change of location only.

13VAC6-20-80. Dealer responsibility for inspections; other items.

A. The dealer shall inspect every new manufactured home unit upon delivery from a manufacturer. If a dealer becomes aware of a noncompliance or an imminent safety hazard, ~~as defined in 13VAC5-95-10 of the Manufactured Home Safety Regulations~~, in a manufactured home, the dealer shall contact the manufacturer, provide full information concerning the problem, and request appropriate action by the manufacturer. No dealer shall sell a new manufactured home if he becomes aware that it contains a noncompliance or an imminent safety hazard.

B. The dealer shall inspect every new manufactured home unit prior to selling to determine that all items of furniture, appliances, fixtures and devices are not damaged and are in place and operable.

C. A dealer shall not alter or cause to be altered any manufactured home to which a HUD label has been affixed if such alteration or conversion causes the manufactured home to be in violation of the standards.

D. If the dealer provides for the installation of any manufactured home he sells, the dealer shall be responsible for making sure the installation of the home meets the manufacturer's installation requirements and the Code.

E. On each home sold by the dealer, the dealer shall collect the applicable title fees and title tax for the manufactured home, to include an additional \$30 inspection/administrative fee, and forward such fees and taxes to the Virginia Department of Motor Vehicles.

The above fees shall be submitted to the Virginia Department of Motor Vehicles within 30 days from the completion date of the sale.

F. On each home sold by the dealer, the dealer shall provide the owner with information to file a claim supplied by the department.

Article 3
Brokers

13VAC6-20-90. License required; annual renewal.

A. Any person located in or outside of the Commonwealth buying or selling, negotiating the purchase or sale or exchange of, or leasing used manufactured homes and meeting the definition of broker in 13VAC6-20-10 shall apply to the board for a license. The license shall be displayed

in a conspicuous place accessible to the public in the office of the business location. The license shall be issued for a term of one year from the date of issuance.

B. Each licensed broker shall apply for license renewal annually, by application and accompanied by the required fee. Applicants for license renewal shall meet all the criteria for original licensing. Upon failure to renew, the license shall automatically expire.

~~C. Application for renewal of an expired license received by the board within 60 calendar days after the expiration of the license shall require payment of a \$100 penalty by the applicant. Application for renewal received by the board more than 60 calendar days but less than one year from the expiration shall be reviewed by the board. The expired license may be renewed by the board under such additional conditions, warranties or agreements by the applicant as required by the board. Application for renewal more than one year after expiration of a license shall be considered as a new application for a license and shall require payment of all fees and assessments for a new license. When applying for renewal of an expired license, the applicant shall certify to the board that, during the time of license expiration, all activities of the regulant within the scope of this chapter were in compliance with the requirements of this chapter. Upon application and payment of the renewal fee and any penalty by a broker, the board may review an expired license if satisfactory evidence is presented to it that the applicant has not engaged in business as a broker in Virginia after expiration of the license or agrees to the conditions imposed by the board, and is otherwise eligible for a license under this chapter. Should the department fail to receive a licensed broker's renewal form and appropriate fee within 30 days of the license expiration date, the broker shall be required to reinstate the license according to the terms and conditions of Article 8 (13VAC6-20-201 et seq.) of this part.~~

D. For licensing purposes, a broker operating more than one business location shall have each location treated as a separate entity and shall adhere to all requirements for broker licensing, including posting a license, at each location.

E. Each broker licensed under this chapter shall also obtain a certificate of dealer registration from the Virginia Department of Motor Vehicles. The certificate of registration shall be renewed annually and shall be maintained in effect with the Department of Motor Vehicles as long as the broker is licensed under this chapter.

13VAC6-20-100. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department and may be submitted as designated in hard copy or by electronic means. All information required on the form shall be furnished by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by 13VAC6-20-420 A 3.
2. Licensing fee required by 13VAC6-20-200 A 5.
3. Statement of Compliance.
4. Verification of a business office with all utilities, including a business telephone, and where the required business records are maintained.
5. Verification of a permanent business sign, in view of public traffic, bearing the name of the firm.
6. Name of the owner, principal, manager, agent or other person designated as the holder of the broker's license for the specific location and the names of the partners or principals in the broker's firm.
7. List of salespeople employed with the following biographical information for each:

- Date of birth
- Sex
- Weight
- Height
- Eye/hair color

Photographs of the front of the business office and required sign may be considered as verification required by this subsection.

C. The Department of Housing and Community Development will mail a notice of renewal to the licensee at the last known address of record. Licensees may submit renewals by mail or electronically. Failure to receive this notice shall not relieve the licensee of the obligation to renew. If the licensee does not receive the notice of renewal, a copy of the license may be substituted with the required fee. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by 13VAC6-20-200 A 6.
2. Statement of Compliance.
3. Notification of any significant changes to the office or the business sign.
4. Any changes of officers or directors of the company or corporation.
5. A copy of the broker's current certificate of registration from the Department of Motor Vehicles.
6. Updated list of salespeople employed.

D. Any change in the form of ownership of the broker or any changes (deletions or additions) in the partners or

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principals of the broker shall be submitted to the board with an application and fee for a new license. If the new owner(s) assume the liabilities of the previous owner(s), then a new recovery fund assessment is not required. New recovery fund assessments shall be required when the new owner(s) do not assume the liabilities of the previous owner(s).

The board shall be notified immediately by the broker of any change in the operating name of the broker. The director shall endorse the change on the license without requiring an additional fee. The board shall be notified immediately by the broker of any change in location of the broker. The broker shall pay a fee of \$50 for the change of location on the license, but shall not be required to pay an additional assessment to the recovery fund for the change of location only.

13VAC6-20-120. Broker responsibility for inspections; other items.

A. The broker shall inspect every used manufactured home unit prior to completion of sale. No broker shall sell a used manufactured home, if he becomes aware that it contains an imminent safety hazard ~~as defined in 13VAC5-95-10 of the Manufactured Home Safety Regulations.~~

Exception: A broker may sell a used manufactured home in which he is aware of an imminent safety hazard if the buyer is advised of the imminent safety hazard in writing by the broker and is further advised that building permits may be required from the local building official for repair of the imminent safety hazard.

B. A broker shall not alter or cause to be altered any manufactured home to which a HUD label has been affixed if such alteration or conversion causes the manufactured home to be in violation of the standards.

C. If the broker provides for the installation of any manufactured home he sells, the broker shall be responsible for making sure the installation of the home meets the manufacturer's installation requirements and the Code.

D. On each home sold by the broker, the broker shall collect the applicable title tax and title fees for the manufactured home, to include an additional \$30 inspection/administrative fee, and forward such fees and taxes to the Virginia Department of Motor Vehicles.

The above fees shall be submitted to the Virginia Department of Motor Vehicles within 30 days from the completion date of the sale.

Article 4
Salespeople

13VAC6-20-130. License required; annual renewal.

A. Any person employed by a dealer, broker or manufacturer buying or selling or negotiating the purchase, sale or exchange of new or used manufactured homes and

meeting the definition of a salesperson in 13VAC6-20-10 shall apply to the board for a license. The salesperson's license shall be displayed in the company's business office in a conspicuous place accessible to the public in public view. The license shall be issued for a term of one year from the date of issuance. A salesperson shall be ~~allowed to engage in business as a licensed salesperson~~ authorized by the board to sell manufactured homes after applying for a license, accompanied by the required fees, but prior to receiving the license back from the board, and shall not be considered to be an "unlicensed salesperson" during such time.

B. Each licensed salesperson shall apply for license renewal annually, by application and accompanied by the required fee. Applicants for license renewal shall meet all criteria for original licensing. Upon failure to renew, the license shall automatically expire.

~~C. Application for renewal of an expired license received by the board within 60 calendar days after the expiration of the license shall require payment of a \$100 penalty by the applicant. Application for renewal received by the board more than 60 calendar days but less than one year from the expiration shall be reviewed by the board. The expired license may be renewed by the board under such additional conditions, warranties or agreements by the applicant as required by the board. Application for renewal more than one year after expiration of a license shall be considered as a new application for a license and shall require payment of all fees and assessments for a new license. When applying for renewal of an expired license, the applicant shall certify to the board that, during the time of license expiration, all activities of the regulant within the scope of this chapter were in compliance with the requirements of this chapter. Upon application and payment of the renewal fee and any penalty by a salesperson, the board may renew an expired license if satisfactory evidence is presented to it that the applicant has not engaged in business as a salesperson in Virginia after expiration of the license and prior to application for renewal or agrees to the conditions imposed by the board, and is otherwise eligible for a license under this chapter. Should the department fail to receive a licensed salesperson's renewal form and appropriate fee within 30 days of the license expiration date, the salesperson shall be required to reinstate the license according to the terms and conditions of Article 8 (13VAC6-20-201 et seq.) of this part.~~

D. When employed by a dealer, broker or manufacturer having more than one licensed retail location or business office, a licensed salesperson may transfer or be temporarily assigned from one location to the other as long as he is working for the same company under the same ownership. Such transfer or assignment shall not require an additional license or Transaction Recovery Fund assessment. If a salesperson works for more than one company or at locations with different owners, he shall be licensed separately for each

and pay a separate Transaction Recovery Fund assessment for each such license.

13VAC6-20-140. Application for licensing; renewal.

A. Application for license or renewal shall be on forms supplied by the department and may be submitted as designated in hard copy or by electronic means. All information required on the form shall be supplied by the applicant for the board's review.

B. Each application for original licensure shall be accompanied by the following:

1. Deposit in the Transaction Recovery Fund required by 13VAC6-20-420 A 4.
2. Licensing fee required by 13VAC6-20-200 A 7.
3. Statement of Compliance.

C. The Department of Housing and Community Development will mail a notice of renewal to the licensee at the last known address of record. Licensees may submit renewals by mail or electronically. Failure to receive this notice shall not relieve the licensee of the obligation to renew. If the licensee does not receive the notice of renewal, a copy of the license may be substituted with the required fee. Each application for renewal shall be accompanied by the following:

1. Licensing fee required by 13VAC6-20-200 A 8.
2. Statement of Compliance.

Article 6
Violations and Hearings

13VAC6-20-170. Prohibited conduct; grounds for denying, suspending or revoking license.

A. The following acts by regulants are prohibited and may be considered by the board as grounds for action against the regulant:

1. Engaging in business as a manufactured home manufacturer, dealer or broker without first obtaining a license from the board.
2. Engaging in business as a manufactured home salesperson without first applying to the board for a license.
3. Making a material misstatement in an application for license.
4. Failing to pay a required assessment to the Transaction Recovery Fund.
5. Failing to comply with the warranty service obligations and claims procedures required by this chapter.
6. Failing to comply with the set-up and tie-down requirements of the Code.

7. Knowingly failing or refusing to account for or pay over money or other valuables belonging to others which have come into the regulant's possession due to the sale of a manufactured home.

8. Using unfair methods of competition or unfair or deceptive commercial acts or practices.

9. Failing to comply with the advertising provisions in Part IV of this chapter (13VAC6-20-270 et seq.).

10. Defrauding any buyer to the buyer's damage, and any other person in the conduct of the regulant's business.

11. Employing an unlicensed salesperson.

12. Knowingly offering for sale a manufactured home produced by a manufacturer which is not licensed as a manufacturer under this chapter.

13. Knowingly selling a manufactured home to a dealer who is not licensed as a dealer under this chapter.

14. Failing to appear before the board upon due notice.

15. Failing to comply with orders issued by the board pursuant to this chapter.

16. Failing to renew a license and continuing to engage in business as a manufacturer, dealer, broker or salesperson after the expiration of any license.

17. A salesperson selling, exchanging or offering to sell or exchange a manufactured home for any dealer or broker other than the licensed dealer or broker employing the salesperson.

18. A salesperson offering, transferring or assigning any negotiated sale or exchange of a manufactured home to another dealer, broker, manufacturer or salesperson.

19. Failing to comply with the Statement of Compliance.

20. Failing to notify the board of a change of location or address of the business office.

21. Failing to comply with any provisions of this chapter.

a. The board may revoke or deny renewal of an existing license or refuse to issue a license to any manufactured home broker, dealer, manufacturer, or salesperson who is shown to have a substantial identity of interest with a manufactured home broker, dealer, or manufacturer whose license has been revoked or not renewed by the board.

b. Any person whose license is revoked or not renewed for cause by the board shall not be eligible for a license under any circumstances or under any name, except as provided by regulations of the board pursuant to § 36-85.18 of the Code of Virginia.

Regulations

22. Failing to comply with the regulations of state or federal agencies regarding the financing, titling, taxation or transporting of manufactured homes.

B. The board may deny, suspend, revoke or refuse to renew or reinstate the license of a regulant because of, but not limited to, one or more of the following grounds:

1. Having had a license previously denied, revoked or suspended under this chapter.
2. Having a license denied, suspended or revoked by a similar licensing entity in another state.
3. Engaging in conduct in another state which would have been a violation of this chapter if the actions were committed in Virginia.
4. Failing to obtain a required certification of registration from the Department of Motor Vehicles, failing to renew the annual certificate of registration, or having the certificate of registration suspended or revoked by the Department of Motor Vehicles.
5. Having been convicted or found guilty in any jurisdiction of a felony.

13VAC6-20-180. Penalties; notice to regulant.

A. The board shall have the power to deny, suspend, revoke, or refuse to renew or reinstate the license of a regulant found to be engaging in prohibited conduct or otherwise failing to comply with this chapter or orders of the board.

B. The board shall have the authority to levy ~~assessments~~ monetary penalties in addition to or instead of denying, suspending, revoking, or refusing to renew or reinstate a regulant's license. Such ~~assessments~~ monetary penalties shall include the following:

1. ~~Transaction Recovery Fund assessments~~ Monetary penalties of up to \$2,500 for each violation by a manufacturer.
2. ~~Transaction Recovery Fund assessments~~ Monetary penalties of up to \$2,500 for each violation by a dealer or broker.
3. ~~Transaction Recovery Fund assessments~~ Monetary penalties of up to \$2,500 for each violation by a salesperson.

C. The board shall notify the regulant, in writing, of any complaint directed against him. The notice shall include the time and place of a conference or hearing on the complaint. No penalties shall be imposed by the board until after the conference or hearing.

13VAC6-20-190. Conference; hearing; service of notice.

A. The board, or department acting on the board's behalf, shall send notice of the conference or hearing to the regulant at least 15 calendar days prior to the date of the conference or

hearing. The notice shall be sent by certified mail to the address of the regulant, as shown on the license or other record of information in possession of the board.

B. The conference or hearing shall be conducted by the board according to the applicable provision of the Administrative Process Act and shall be open to the public. The regulant or applicant shall have the right to be heard in person or by counsel, and to provide evidence and witnesses on his behalf.

C. After the conference or hearing has been completed, if the board determines that the regulant or applicant has engaged in prohibited conduct, or is in violation of this chapter or orders of the board, or otherwise determines that it has grounds to impose any penalties under 13VAC6-20-180, the board shall immediately notify the regulant or applicant in writing, by certified mail, of the action imposed by the board. The department shall be responsible for carrying out the board's decision. The department shall also notify the Department of Motor Vehicles of the suspension or revocation of any dealer's or broker's license under this chapter.

~~D. The decision of the board shall be final if no appeal is made. An appeal from the decision of the board may be filed with a court in accordance with the Administrative Process Act.~~

Article 7 License Fees

13VAC6-20-200. Fee schedules.

A. The following fees are set by the board for annual licenses and renewals issued in accordance with this chapter. Checks, money orders, credit cards and other approved electronic fee payments shall be made payable to the Treasurer of Virginia or applicable state agency. In the event that a check, money draft, credit card, or similar instrument for payment of a required fee is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee plus an additional processing charge set by the department.

1. The manufacturer's original license fee shall be ~~\$600~~ \$700.
2. The manufacturer's renewal license fee shall be ~~\$500~~ \$600.
3. The dealer's original license fee shall be ~~\$150 to be submitted with the application for licensure plus \$10 per home sold by the dealer to be submitted at the completion of the sale~~ \$200.
4. The dealer's renewal license fee shall be ~~\$100 to be submitted with the application for renewal plus \$10 per home sold by the dealer to be submitted at the completion of the sale~~ \$150.

5. The broker's original license fee shall be ~~\$150 to be submitted with the application for licensure plus \$10 per home sold by the broker to be submitted at the completion of the sale~~ \$200.

6. The broker's renewal license fee shall be ~~\$100 to be submitted with the application for renewal plus \$10 per home sold by the broker to be submitted at the completion of the sale~~ \$150.

7. The salesperson's original license fee shall be ~~\$50~~ \$100.

8. The salesperson's renewal license fee shall be ~~\$50~~ \$100.

B. The following fees apply to special licenses issued by the board in accordance with Article 5 (13VAC6-20-160) of this part of this chapter:

1. Manufacturer's special license fee shall be ~~\$25~~ \$40.

2. Dealer's special license fee shall be ~~\$25~~ \$40.

3. Broker's special license fee shall be ~~\$25~~ \$40.

4. Salesperson's special license fee shall be ~~\$10~~ \$30.

Article 8
Reinstatement

13VAC6-20-201. Reinstatement required.

Should the board fail to receive a license holder's renewal form and appropriate fee within 30 days of the license expiration date, or if the license has been revoked or not renewed by the board the applicant shall be required to reinstate the license. Applicants for reinstatement of a manufacturer's license shall continue to meet all the qualifications for licensure set forth in Article 1 (13VAC6-20-20 et seq.) of this part. Applicants for reinstatement of a dealer's license shall continue to meet all the qualifications for licensure set forth in Article 2 (13VAC6-20-50 et seq.) of this part. Applicants for reinstatement of a broker's license shall continue to meet all qualifications for licensure set forth in Article 3 (13VAC6-20-90 et seq.) of this part. Applicants for reinstatement of a salesperson's license shall continue to meet all qualifications for licensure set forth in Article 4 (13VAC6-20-130 et seq.) of this part.

13VAC6-20-202. Reinstatement fees.

Each check, money order, credit card, and other approved electronic payment of fee shall be made payable to the "Treasurer of Virginia" or applicable state agency. In the event that a check, money draft, credit card, or similar instrument for payment of a required fee is not honored by the bank or financial institution named, the applicant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department. The following reinstatement fees shall be submitted by the applicant with the reinstatement application:

1. Manufacturer's fee \$750*

2. Dealer's fee \$300*

3. Broker's fee \$300*

4. Salesperson's fee \$225*

*Includes the renewal fee listed in 13VAC6-20-200.

The date on which the reinstatement application and fee is received by the department shall determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the license requirements in place at the time of that application. Licenses that have been expired for a year or more from date of expiration are not eligible for reinstatement. An application for a new license must be submitted.

13VAC6-20-203. Status of the license during the period prior to reinstatement.

A manufacturer, dealer, broker, or salesperson who reinstates his license shall be regarded as having been continuously licensed without interruption, shall remain under the full disciplinary authority of the board during this period, and may be held accountable for his activities during this period. Any person who suffers a loss or damage by an act of a regulant that constitutes a violation of this chapter during the period between the expiration of the license and the reinstatement of the license shall not be prohibited from filing a claim for recovery from the Manufactured Housing Transaction Recovery Fund.

A regulant who fails to reinstate his license shall be regarded as unlicensed from the expiration date of the license forward.

Nothing in this chapter shall divest the board of its authority to discipline a regulant for a violation of the law or regulations during the period of time for which the regulant was licensed.

13VAC6-20-204. Board discretion to deny reinstatement.

Failure to timely pay any monetary penalty, reimbursement of costs or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, or processing of a new application. The board may deny reinstatement of a license for the same reasons as it may refuse initial or renewal licensure or to discipline a regulant.

13VAC6-20-250. Operation of dealership by manufacturer. (Repealed.)

A manufacturer shall not own, operate or control a dealership in the Commonwealth except under the following conditions:

Regulations

~~1. A manufacturer may operate a dealership for a temporary period, not to exceed one year, during the transition from one owner or operator to another;~~

~~2. A manufacturer may own or control a dealership while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership; or~~

~~3. A manufacturer may own, operate, or control a dealership if the board determines, after a conference or hearing at the request of any party, that there is no dealer independent of the manufacturer available in the relevant market area to own and operate the dealer or manufacturer sales agreement in a manner consistent with the public interest.~~

13VAC6-20-350. Warranty service; time limits; rejection of claim.

A. Any defect which is determined to be an imminent safety hazard as defined in 13VAC5 95 10 of the ~~Manufactured Home Safety Regulations~~ to life and health shall be remedied within three days of receipt of the written notice of the warranty claim. Defects which may be considered as imminent safety hazards to life and health include, but are not limited to, any of the following:

1. Inadequate heating in freezing weather.
2. Failure of sanitary facilities.
3. Electrical shock hazards.
4. Leaking gas.
5. Major structural failure.

The board may suspend this three-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural disasters.

B. All other defects shall be remedied within 45 days of receipt of the written notice of the warranty claim unless a bona fide reason exists for not remedying the defect within the time period. If the responsible party has a bona fide reason for not meeting the 45-day time period, he shall respond to the claimant in writing, with a copy to the board, explaining the reason or reasons and stating what further action is contemplated regarding the warranty service.

C. Department staff handling consumer complaints under the Code shall also review the complaints for warranty service obligations under this part, and shall make initial determinations of defects and imminent safety hazards to life and health as defined by the Code. Any disagreements between department staff and regulants or responsible parties regarding these determinations shall be resolved by the board. If a regulant or responsible party disputes the determination of an imminent safety hazard to life or health by the staff and asks for a ruling by the board, the three-day time period for remedying the hazard shall not be enforced unless the board

agrees to the determination. If the board determines that the defect is an imminent safety hazard, it shall immediately notify the responsible party of the determination. The responsible party shall have three days from receipt of this notice to remedy the hazard.

D. Within the time limits specified in subsections A and B of this section, the responsible party shall either resolve the claim or determine that it is not justified. Whenever a regulant determines that a claim for warranty service is not justified, in whole or in part, he shall immediately notify the claimant in writing that the claim or a part of the claim is rejected. This notice shall explain to the claimant why the claim or specific parts of the claim are rejected and that the claimant is entitled to complain or file an appeal to the board. The notice shall provide the claimant with the complete address of the board.

13VAC6-20-460. Revocation of license.

Upon payment to a claimant from the fund, the board shall immediately revoke the license of the regulant whose conduct resulted in the payment from the fund. Any regulant whose license is revoked under this section shall not be eligible to apply for a new license ~~or~~ renewal, or reinstatement of license until he has repaid the fund the full amount of the payments from the fund on his amount, plus interest, calculated at the rate of interest the recovery fund was earning at the time of the payment from the fund.

VA.R. Doc. No. R09-1572; Filed May 3, 2012, 9:25 a.m.



TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act in accordance with §§ 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department of State Police will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **19VAC30-20. Motor Carrier Safety Regulations (amending 19VAC30-20-80, 19VAC30-20-210, 19VAC30-20-230).**

Statutory Authority: § 52-8.4 of the Code of Virginia; 49 CFR Part 390.

Effective Date: July 1, 2012.

Agency Contact: Lt. Colonel Robert Kemmler, Regulatory Coordinator, Department of State Police, Bureau of Administrative and Support Services, P.O. Box 27472,

Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2234, or email robert.kemmler@vsp.virginia.gov.

Summary:

The regulatory action makes technical amendments and brings the Virginia Motor Carrier Regulations into compliance with § 52-8.4 of the Code of Virginia.

19VAC30-20-80. Compliance.

Every person and commercial motor vehicle subject to the Motor Carrier Safety Regulations operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the United States Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of January 1, 2010, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 366, 370 through 376, 379, 380 Subpart E, 382, 385, 386 Subpart G, 387, 390 through 397, and 399, which are incorporated in these regulations by reference, with certain exceptions, as set forth below.

19VAC30-20-210. Drivers declared out of service - § 395.13 (a).

Law-enforcement officers ~~of the Department of State Police~~ specifically designated by the superintendent are authorized to declare a driver out of service and to notify the motor carrier of that declaration, upon finding at the time and place of examination that the driver has violated the out-of-service criteria as set forth in § 395.13 (b).

Article 8

Part 396 - Inspection, Repair, and Maintenance

19VAC30-20-230. Inspection of motor vehicles in operation - § 396.9 (a).

Law-enforcement officers ~~of the Department of State Police~~ specifically designated by the superintendent are authorized to enter upon and perform inspections of motor carrier vehicles in operation.

VA.R. Doc. No. R12-3193; Filed May 15, 2012, 2:05 p.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Final Regulation

Title of Regulation: 23VAC10-70. Virginia Slaughter Hog and Feeder Pig Excise Tax Regulations (repealing 23VAC10-70-10 through 23VAC10-70-70).

Statutory Authority: § 58.1-203 of the Code of Virginia.

Effective Date: July 4, 2012.

Agency Contact: Joseph Mayer, Lead Tax Policy Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

Summary:

Effective November 1, 1986, federal law ("The Pork, Promotion, Research, and Consumer Information Act of 1985," 7 USC § 4801) ceded to the federal government the sole right to levy an excise tax on pork. As a result, the Virginia Slaughter Hog and Feeder Pig Excise Tax provided for by § 3.2-2006 of the Code of Virginia is no longer imposed. This regulatory action repeals the Virginia Slaughter Hog and Feeder Pig Excise Tax Regulation.

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

VA.R. Doc. No. R07-36; Filed May 10, 2012, 8:46 a.m.

GENERAL NOTICES/ERRATA

AIR POLLUTION CONTROL BOARD

Proposed State Implementation Plan Revision

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to assure necessary authorities are contained in the state implementation plan (SIP) to allow areas to attain and maintain the national ambient air quality standard for ozone. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comment on the issue of whether the plan demonstrates the Commonwealth's compliance with federal Clean Air Act requirements related to general state plan infrastructure for controlling ozone.

Public comment period: June 4, 2012, to July 5, 2012.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name and address of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice and another 30-day comment period will be conducted.

Description of proposal: The proposed revision will consist of a demonstration of compliance with the general requirements of § 110(a)(2) of the federal Clean Air Act for the 2008 ozone national ambient air quality standard (NAAQS).

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All information received is part of the public record.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx>). The documents may also be obtained by contacting the DEQ representative

named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) DEQ Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800,
- 3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,
- 4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,
- 5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,
- 6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
- 7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
- 8) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Doris A. McLeod, Air Quality Planner, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4510, or email doris.mcleod@deq.virginia.gov.

Title V Permit Program Funding

Purpose of notice: To announce a public comment opportunity on the establishment of fees to fund the Title V Permit Program.

Public comment period: May 16, 2012, through May 25, 2012.

Topic of public comment period: Department of Environmental Quality (DEQ) is providing an opportunity for the public to comment on draft final amendments to the regulations establishing fees for funding the Title V permit programs. The 2012-14 biennial budget (Item 365, subsection B) includes a requirement that the State Air Pollution Control Board adopt regulations adjusting permit program emissions fees and establishing permit application processing fees and permit maintenance fees sufficient to ensure that revenue covers total direct and indirect program costs. All of the fees are to be adjusted annually by the Consumer Price Index. Other provisions in the bill require that (i) all emission fees are to be collected annually, (ii) the initial adjustment of emission fees shall not exceed 30% over current fee rates, (iii) permit application fees shall not be credited toward the amount of emission fees owed, (iv) regulations adopted to

implement the provisions of this item shall be exempt from the Administrative Process Act, and (v) the regulations are to be effective no later than July 1, 2012.

A copy of the draft final regulation is available on the website at <http://www.deq.virginia.gov/Programs/Air/PublicNotices/AirRegulations.aspx>.

Contact Information: Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, or email gary.graham@deq.virginia.gov.

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 10, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2012-00043

Ex Parte: In the matter of revising the rules of the State Corporation Commission governing utility rate applications by electric utilities subject to the Virginia Electric Utility Regulation Act

ORDER INITIATING PROCEEDING

The State Corporation Commission ("Commission") initiates this proceeding to consider whether the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings ("Rate Case Rules") should be revised.¹

In 2007, the Virginia General Assembly amended Chapter 23 of Title 56 of the Code of Virginia ("Code") ("Regulation Act"),² which significantly changed the manner in which electric utility rates are regulated. On December 16, 2008, in response thereto, the Commission adopted revisions to the Rate Case Rules.³

The Regulation Act authorizes several new types of regulatory cases, including biennial reviews of investor-owned incumbent electric utility earnings and specific rate adjustment clause ("RAC") proceedings that did not previously exist under Virginia law.⁴ Subsequent to the most recent revision of the Rate Case Rules, Appalachian Power Company and Virginia Electric and Power Company d/b/a Dominion Virginia Power have initiated numerous cases under the Regulation Act. For example, "going-in" rate cases and biennial reviews for both utilities, as well as a large number of RAC proceedings, have now taken place. As a result, since the most recent revisions to the Rate Case Rules, the utilities, interested parties, and the Commission have obtained actual experience in implementing the Regulation Act. During the course of these new proceedings, numerous questions regarding implementation of the new law have arisen.

The Commission finds that it is now appropriate to consider potential revisions to the Rate Case Rules applicable to rate proceedings conducted under the Regulation Act. Thus, given the complexity of the statute and the preference to avoid conflicting rules and practices across the many types of new statutory proceedings authorized by the Regulation Act, and to provide interested persons (including the investor-owned incumbent electric utilities subject to the Regulation Act) notice and an opportunity to comment on potential revisions to the rules and procedures applicable to future cases, the Commission will undertake a review of the Rate Case Rules applicable to rate proceedings conducted under the Regulation Act and will consider proposing and adopting additional revisions to the Rate Case Rules. Specifically, the Commission will: (i) seek and consider comments on matters regarding potential revisions, and then (ii) determine whether to propose specific revisions to the Rate Case Rules for further notice and comment.

As part of this review, the Commission seeks comment on the following questions:

1. Do any of the Schedules required to be filed in Biennial Review and RAC proceedings need to be revised or deleted or are new Schedules necessary? If so, explain in detail why such changes are necessary and include a sample format.
2. Are there potential revisions to the Rate Case Rules applicable to rate proceedings conducted under the Regulation Act that the Commission should consider?

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUE-2012-00043.
- (2) On or before June 8, 2012, the Commission's Division of Information Resources shall publish on one occasion the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF A PROCEEDING TO CONSIDER WHETHER THE RULES GOVERNING UTILITY RATE APPLICATIONS AND ANNUAL INFORMATIONAL FILINGS SHOULD BE REVISED

The State Corporation Commission ("Commission") has initiated a proceeding to consider whether the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings ("Rate Case Rules") should be revised.

In 2007, the Virginia General Assembly amended Chapter 23 of Title 56 of the Code of Virginia ("Regulation Act"), which significantly changed the manner in which electric utility rates are regulated. On December 16, 2008, in response

General Notices/Errata

thereto, the Commission adopted revisions to the Rate Case Rules in Case No. PUE-2008-00001.

The Regulation Act authorizes several new types of regulatory cases, including biennial reviews of investor-owned incumbent electric utility earnings and specific rate adjustment clause ("RAC") proceedings that did not previously exist under Virginia law. Subsequent to the most recent revision of the Rate Case Rules, Appalachian Power Company and Virginia Electric and Power Company d/b/a Dominion Virginia Power have initiated numerous cases under the Regulation Act. During the course of these new proceedings, numerous questions regarding implementation of the new law have arisen.

The purpose of this proceeding is to provide interested persons (including the investor-owned incumbent electric utilities subject to the Regulation Act) notice and an opportunity to comment on potential revisions to the rules and procedures applicable to future cases. Specifically, the Commission will: (i) seek and consider comments on matters regarding potential revisions, and then (ii) determine whether to propose specific revisions to the Rate Case Rules for further notice and comment.

As part of this review, the Commission seeks comment on the following questions:

(1) Do any of the Schedules required to be filed in Biennial Review and RAC proceedings need to be revised or deleted or are new Schedules necessary? If so, explain in detail why such changes are necessary and include a sample format.

(2) Are there potential revisions to the Rate Case Rules applicable to rate proceedings conducted under the Regulation Act that the Commission should consider?

On or before July 6, 2012, any interested person, including the Commission Staff and the investor-owned incumbent electric utilities subject to the Regulation Act, who desires to file written comments on matters regarding potential revisions to the Rate Case Rules may file such comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. All comments shall refer to Case No. PUE-2012-00043. Any person desiring to submit comments electronically may do so, on or before July 6, 2012, by following the instructions

available at the Commission's website: <http://www.scc.virginia.gov/case>.

Upon consideration of any filed comments, the Commission will then determine whether to propose specific revisions to the Rate Case Rules. Further notice and opportunity for comment would be provided for any such proposed revisions.

VIRGINIA STATE CORPORATION COMMISSION

(3) Any interested person, including the Commission Staff and the investor-owned incumbent electric utilities subject to the Regulation Act, who desires to file written comments on the matters regarding the potential revisions to the Rate Case Rules may file, on or before July 6, 2012, such comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. All comments shall refer to Case No. PUE-2012-00043. Any person desiring to submit comments electronically may do so, on or before July 6, 2012, by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(4) This matter shall be continued generally pending further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official service lists in Case Nos. PUE-2009-00019, PUE-2009-00030, PUE-2011-00027, and PUE-2011-00037. The Service Lists are available from the Clerk of the Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy also shall be sent to the Commission's Office of General Counsel and Divisions of Energy Regulation and Utility Accounting and Finance.

¹ 20 VAC 5-201-10 et seq.

² Va. Code § 56-576 et seq.

³ Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of revising the rules of the State Corporation Commission governing utility rate increase applications pursuant to Chapter 933 of the 2007 Acts of Assembly, Case No. PUE-2008-00001, 2008 S.C.C. Ann. Rept. 462, Order Adopting Regulations (Dec. 16, 2008).

⁴ See, e.g., Va. Code § 56-585.1.

DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF CONSERVATION AND RECREATION

Total Maximum Daily Loads and Implementation Plans for Long Meadow Run and Turley Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) and

implementation plans (IPs) for Long Meadow Run and Turley Creek in Rockingham County. These streams were listed in 2002 as impaired due to violations of the state's general water quality standard (benthic) for aquatic life. The aquatic life impairment on Long Meadow Run extends from its headwaters to the confluence with the North Fork Shenandoah River, which is a total of 8.53 miles. The Turley Creek aquatic life impairment extends a total of 4.01 miles from its headwaters to the confluence with the North Fork Shenandoah River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The third public meeting on the development of these TMDLs and IPs will be held on Wednesday, June 6, 2012, at 7 p.m. at J. Frank Hillyard Middle School, 226 Hawks Hill Drive, Broadway, VA 22815. The TMDL document will be available on the DEQ website the day of the meeting for public comment and review: <http://www.deq.virginia.gov/Programs/Water/WaterQualityIn formationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx>.

The public comment period for the third public meeting will end on July 10, 2012. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@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 May 15, 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.

Director's Order Number Fifty-One (12)

Virginia's Instant Game Lottery 1332; "Bonus Crossword" Final Rules for Game Operation (May 14, 2012, effective nunc pro tunc to May 7, 2012)

Director's Order Number Fifty-Two (12)

Virginia's Instant Game Lottery 1346; "5X The Money" Final Rules for Game Operation (May 14, 2012)

REAL ESTATE APPRAISER BOARD

Public Comment Period and Study of Potential Continuing Education Curriculum

The Real Estate Appraiser Board (board) is conducting a study to evaluate the development of a continuing education curriculum for real estate appraiser licensees that includes the effects of the use of energy efficiency and renewable energy equipment on the determination of fair market value in the appraisal of nonincome producing residential real estate. The board invites public comment on this issue. This study is being conducted pursuant to Chapter 49 (House Bill 433) and Chapter 388 (Senate Bill 507) of the 2012 Acts of Assembly. The board welcomes written comments on this matter.

Written comments will be received until 5 p.m. on Thursday, July 5, 2012, and may be sent to the address below or sent to reappraisers@dpwr.virginia.gov. Comments or questions should be sent to Christine Martine, Executive Director, Real Estate Appraiser Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2039, or email reappraisers@dpwr.virginia.gov.

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 22VAC40-690, Virginia Child Care Provider Scholarship Program.

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 June 4, 2012, and ends on June 25, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at

General Notices/Errata

<http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Kathy Gillikin, Program Manager, 801 E. Main Street, Richmond, VA 23219, telephone (804) 726-7606, FAX (804) 726-7655, or email kathy.gillikin@dss.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.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Proposed Consent Special Order for Moseley LP

Purpose of notice: To seek public comment on the terms of a proposed consent special order issued to 6801 Woolridge Road - Moseley LP (Moseley).

Public comment period: June 4, 2012, through July 4, 2012.

Summary of proposal: The proposed consent special order describes a settlement with Moseley to resolve alleged past violations of the Virginia Stormwater Management Act and Regulations at Moseley's Lower Magnolia Green construction project located off of Hull Street, Duval Road, and Otterdale Road in Chesterfield County.

How to comment: The Virginia Department of Conservation and Recreation accepts written comments from the public by mail, email, or facsimile. All comments must include the name, address, and telephone number of the person commenting. Comments must be received during the comment period. A copy of the proposed consent special order is available on request from the person identified directly below as the contact.

Contact for public documents, documents, and additional information: Edward A. Liggett, Virginia Department of Conservation and Recreation, 900 Natural Resources Drive, Suite 800-DCR, Charlottesville, VA 22903, telephone (434) 220-9067, FAX (804) 786-1798, or email ed.liggett@dcr.virginia.gov.

Contact Information: David C. Dowling, Policy and Planning Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for Empire Petroleum Holdings, L.L.C.

An enforcement action has been proposed for Empire Petroleum Holdings, L.L.C. for violations at Fast Fuels 0406 9266 located at 420 N. Poplar Avenue, Waynesboro, VA. The State Water Control Board proposes to issue a consent special order to Empire Petroleum Holdings, L.L.C. to resolve violations regarding the management of underground storage tanks. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Karen Hensley will accept comments by email at karen.hensley@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 June 4, 2012, to July 4, 2012.

Proposed Consent Order for Reynolds Inliner, L.L.C.

An enforcement action has been proposed for Reynolds Inliner, LLC for violations in Fairfax County. The consent order resolves violations regarding an unauthorized discharge from the sanitary sewer collection system associated with the Noman M. Cole, Jr. Pollution Control Plant. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from June 5, 2012, through July 5, 2012.

Proposed Consent Special Order for Rio Holdings, L.L.C.

An enforcement action has been proposed for Rio Holdings, L.L.C. for violations at BP Gas Station and C Store in Charlottesville, Virginia. The State Water Control Board proposes to issue a consent special order to Rio Holdings, L.L.C. to resolve violations regarding the management of underground storage tanks. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Karen Hensley will accept comments by email at karen.hensley@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 June 4, 2012, to July 4, 2012.

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.

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/cumulatab.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.

