



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

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

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **28:2 VA.R. 47-141 September 26, 2011**, refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **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. Talvener**; **Christopher R. Nolen**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant; **Karen Perrine**, Staff Attorney.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## August 2012 through August 2013

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

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF COUNSELING

#### Initial Agency Notice

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

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

**Name of Petitioner:** Gerard Lawson.

**Nature of Petitioner's Request:** The petitioner is proposing that the language of 18VAC115-20-52 C 3, Residency, be changed to read: Shall hold an active, unrestricted license as a professional counselor, marriage and family therapist, or substance abuse treatment practitioner, school psychologist, clinical psychologist, clinical social worker, or psychiatrist in the jurisdiction where the supervision is being provided. At least 100 hours of the supervision shall be rendered by a licensed professional counselor.

**Agency Plan for Disposition of Request:** In accordance with Virginia law, the petition will be filed with the Register of Regulations and published on August 27, 2012, with comment requested until September 21, 2012. It will also be placed on the Virginia Regulatory Townhall and available for comments to be posted electronically. At its first meeting following the close of comment, which is scheduled for November 16, 2012, the board will consider the request to amend regulations and all comment received in support or opposition.

**Public Comment Deadline:** September 21, 2012.

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

VA.R. Doc. No. R12-33, Filed July 26, 2012, 10:30 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 1. ADMINISTRATION

### DEPARTMENT OF GENERAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of General Services intends to consider amending **1VAC30-45, Certification of Noncommercial Environmental Laboratories**. This regulation sets out the requirements to certify noncommercial laboratories that analyze environmental samples used to determine compliance with the State Water Control Law, Virginia Waste Management Act, and the Virginia Air Pollution Control Law. The proposed action will eliminate all the requirements related to the initial certification period. These changes mainly affect the application procedures. The process to renew certification will be streamlined, reducing the cost for both the agency and the accredited laboratories. The proposed action will revise the fees charged to laboratories under the program. The current fees are insufficient to support the program because fewer laboratories applied for certification than originally anticipated.

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

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

Public Comment Deadline: September 26, 2012.

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

VA.R. Doc. No. R12-3334; Filed August 7, 2012, 11:38 a.m.

telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

VA.R. Doc. No. R11-2542; Filed July 31, 2012, 8:59 a.m.

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## TITLE 16. LABOR AND EMPLOYMENT

### SAFETY AND HEALTH CODES BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Safety and Health Codes Board intends to consider amending **16VAC25-35, Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees**. The purpose of the proposed action is to provide both increased protection to employees and employers performing lead-based paint abatement projects by requiring that licensed lead contractors submit written notification for all lead projects, as defined in 16VAC25-35-10, regardless of the contract price for the lead project.

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

Statutory Authority: § 40.1-22 of the Code of Virginia.

Public Comment Deadline: September 26, 2012.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

VA.R. Doc. No. R12-3269; Filed August 1, 2012, 9:51 a.m.

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### DEPARTMENT OF MINES, MINERALS AND ENERGY

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Mines, Minerals and Energy has WITHDRAWN the Notice of Intended Regulatory Action for **4VAC25-35, Certification Requirements for Mineral Miners**, which was published in 27:2 VA.R. 152 September 27, 2010. This action is being withdrawn because legislative action eliminating the Board of Mineral Mining Examiners that was taken at the 2012 General Assembly Session made this regulatory action obsolete.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402,

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### DEPARTMENT OF CRIMINAL JUSTICE SERVICES

#### Proposed Regulation

**Title of Regulation:** 6VAC20-270. Regulations Relating to Campus Security Officers (adding 6VAC20-270-10 through 6VAC20-270-130).

**Statutory Authority:** § 9.1-102 of the Code of Virginia.

**Public Hearing Information:** December 6, 2012 - 11 a.m. - General Assembly Building, 910 Capitol Street, House Room D, Richmond, VA.

**Public Comment Deadline:** October 26, 2012.

**Agency Contact:** Lisa McGee, Regulatory Manager, Department of Criminal Justice Services, P.O. Box 1300, Richmond, VA 23218, telephone (804) 371-2419, FAX (804) 786-6377, or email [lisa.mcgee@dcjs.virginia.gov](mailto:lisa.mcgee@dcjs.virginia.gov).

**Basis:** Section 9.1-102 of the Code of Virginia authorizes the department, under the direction of the Criminal Justice Services Board, to establish minimum standards for employment, job-entry and in-service training curricula, and certification requirements for campus security officers.

**Purpose:** The regulations establish a certification process for campus security officers to include a background investigation to include a criminal history records inquiry, compulsory minimum training standards, administration of the regulatory system, administrative requirements, and standards of conduct. The regulations also authorize the department to approve instructors to deliver compulsory minimum training and establish administrative requirements and standards of conduct for the instructors. These regulations provide the department with the authority to approve training waivers and suspend or decertify an individual as a campus security officer and establish an appeal process for the individual.

These regulations are essential to the health, safety, and welfare of citizens by ensuring that campus security officers are held to the same standards throughout the Commonwealth of Virginia.

**Substance:** Section 9.1-102 of the Code of Virginia directs the Department of Criminal Justice Services to establish minimum standards for campus security officers including standards for (i) employment, (ii) job-entry and in-service training curricula, and (iii) certification requirements. Such training standards shall include, but not be limited to, the role and responsibility of campus security officers, relevant state

and federal laws, school and personal liability issues, security awareness in the campus environment, and disaster and emergency response. The campus security officer regulations address the necessary definitions, initial certification, and training requirements and exemption from such procedures, suspension of certification, training waivers for experienced officers, standards of conduct, and recertification and decertification procedures. Additionally, instructor approval, administrative requirements, and standards of conduct are addressed.

**Issues:** The primary advantage to the public will be a standard level of training for security officers working on college/university campuses. This will increase the professionalism and enhance the safety of the campus environment for students, faculty, staff, and visitors. The only perceived disadvantage is the increased cost associated with paying for officers to attend mandatory training. This unfunded mandate adds additional costs to the college/university budget.

The primary advantage to the Commonwealth is the enhanced safety of college/university campuses. The only disadvantage to the Commonwealth is the increased costs incurred in the administration and staffing of this training and certification program.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 203 and 233 of the 2006 Acts of the Assembly, The Board of Criminal Justice Services (Board) promulgated emergency regulations for certification of campus security officers. The Board now proposes these regulations as a permanent replacement for the emergency regulations that will expire January 31, 2012. These proposed regulations set initial training standards for campus security officers that are hired by colleges and that are contracted through private security firms as well as setting rules for biennial recertification. These proposed regulations also set rules of conduct for and rules for suspension of certification. In order to become certified, the Board proposes to require campus security officers to:

- Be US citizens or resident aliens legally able to work,
- Have a high school or general equivalency diploma and be at least 18 years of age,
- Undergo a criminal background check,
- Have a valid driver's license if driving will be part of their job,

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- Successfully complete some sort of first aid training as determined by their employing college,
- Complete a specific online course that is provided by Federal Emergency Management Agency (FEMA) and
- Complete 16 hours of initial training in specific modules as determined by the Board and complete post-module tests with a score of at least 70%.
- After initial certification, security officers will be required to complete 16 hours of continuing education each biennium.

Result of Analysis. There is insufficient information to ascertain whether benefits outweigh costs for this regulatory change.

Estimated Economic Impact. Of the requirements that the Board proposes for campus security officers, several will likely have no additional costs attached. Individuals must already be legally eligible to work in order to be legally employed. Individuals must also already be licensed to operate a motor vehicle before they can drive whether they are driving as part of their job or not. The Board's proposed language that mirrors these already existing laws is unlikely to cause any additional costs for regulated entities.

Several other proposed requirements will likely have some costs attached for campus security officers or their employing colleges. Criminal background checks are run by the State Police who charge a \$35 fee. To the extent that colleges don't already require such checks as a condition of employment, they will incur additional annual costs of \$35 times the number of campus security officers hired each year. There are also costs attached to completing the Board approved initial training, Board approved continuing education and the required FEMA online course. The Department of Criminal Justice Services (DCJS) reports that they currently provide both initial training and continuing education for no fee to potential and current campus security officers so these individuals will likely only incur costs for time spent in training and in taking the required tests as well as potentially costs for travelling to where the training is offered. DCJS further reports that they intend to have training available online in 2012. This will likely lower costs for regulated entities as they will then not have to travel for training and will be able to complete training when it is most convenient for them. Regulated entities will also incur costs for time spent completing the FEMA online course.

To the extent that state required training and certification for campus security officers makes college campuses safer, individuals who frequent college campuses will benefit. Currently, there is insufficient information about the magnitude of any potential benefits to ascertain whether they will outweigh costs incurred.

Businesses and Entities Affected. DCJS reports that all campus security officers, approximately 70 colleges and

universities and approximately 50 small business security firms will be affected by these proposed regulations.

Localities Particularly Affected. No localities will be particularly affected by these proposed regulatory changes.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Affected small businesses may incur costs if they pay their staff wages for their time spent training for certification.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There do not appear to be any alternate regulatory methods that would both meet the Board's goals and further reduce costs for affected small businesses.

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

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

Agency's Response to Economic Impact Analysis: The Department of Criminal Justice Services concurs generally with the economic impact analysis of the Department of Planning and Budget on the proposed Regulations Relating to Campus Security Officers.

**Summary:**

*The proposed regulations establish standards for campus security officers who are hired by colleges or universities or contracted through private security firms. The standards include eligibility requirements for certification, standards for initial training and biennial recertification, continuing education requirements, rules of conduct, and provisions for suspending certification.*

**CHAPTER 270****REGULATIONS RELATING TO CAMPUS SECURITY OFFICERS****6VAC20-270-10. Definitions.**

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

"Approved instructor" means a person who has been approved by the department to instruct the Campus Security Officer Training Course.

"Campus security officer" means any person employed by or contracted to a college or university for the sole purpose of maintaining peace and order and who is primarily responsible for ensuring the safety, security, and welfare of students, faculty, staff, and visitors. Certified law-enforcement officers as defined in § 9.1-101 of the Code of Virginia and campus police officers appointed pursuant to § 23-233 of the Code of Virginia are not included in this definition.

"Campus security point of contact" is the person designated by the college, university, private security services business, or private security services training school to serve as the contact person between the department and the college, university, private security services business, or private security services training school on matters concerning the certification of campus security officers.

"Certification" means that a qualified person has met the compulsory minimum entry-level training standards mandated for a campus security officer.

"College or university" means an institution of higher education created to educate and grant certificates or degrees in a variety of subjects.

"Compulsory minimum entry-level training and certification standards" means the compulsory training modules and other certification requirements, determined by the department, to comprise the necessary training and certification standards required as a basis for initial certification.

"Contracted" means a person employed by a licensed private security services business under contract to perform the functions of a campus security officer.

"Date of hire" means the date an employee is hired to provide campus security officer services for a college, university, or private security services business, and whom the department must regulate.

"Department" means the Department of Criminal Justice Services or any successor agency.

"Director" means the chief administrative officer of the department.

"Employee" means a person providing campus security services hired directly by the employing college or university or a person hired by a licensed private security services business supplying campus security services to the college or university on a contract basis.

"Entry-level training requirement" means the compulsory modules determined by the department to comprise the necessary training required as a basis for certification.

"In-service training requirement" means the compulsory in-service training requirement adopted by the department for campus security officers.

"Private security services business" or "PSS" means any person engaged in the business of providing, or who undertakes to provide, security officers to another person under contract, express, or implied as defined in § 9.1-138 of the Code of Virginia.

"Private security services training school" means any person certified by the department to provide instruction in private security subjects for the training of private security service business personnel in accordance with this chapter.

"Special events" means those events at which large numbers of people gather on campus or at college or university facilities creating a need for additional or specialized security actions.

"This chapter" means the Regulations Relating to Campus Security Officers.

"Training requirement" means any entry-level or in-service training or retraining standard established by this chapter.

**6VAC20-270-20. Exemption from certification.**

A. Contracted personnel who hold a valid private security services registration as an unarmed or armed security officer as defined under § 9.1-138 of the Code of Virginia are exempt from these compulsory minimum entry-level training and certification standards provided their duties are limited to security at special events.

B. Part-time officers employed or contracted to any one college or university, or any combination of colleges or universities in Virginia, are exempt from the provisions of this chapter provided that the aggregate hours worked by the officer during the calendar year do not exceed 120 hours.

**6VAC20-270-30. Compulsory minimum entry-level training and certification standards.**

A. In addition to meeting all the hiring requirements of the employing college, university, or private security services business supplying campus security services to the college or university, all campus security officers are required to meet the following compulsory minimum entry-level training and certification standards. Such person shall:



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1. Be a United States citizen or legal resident eligible under United States law for employment in the United States.
2. Undergo a background investigation to include a criminal history inquiry. Results of such inquiries shall be examined by the employer.
3. Possess a high school diploma, General Education Diploma (GED), or other accepted secondary school credential.
4. Be a minimum of 18 years of age.
5. Possess a valid driver's license issued by his state of residence if required by the duties of office to operate a motor vehicle.
6. Successfully complete first aid training as determined by the employing college or university. The level and substance of such training shall be at the discretion of the employing college or university.
7. Complete the online course Introduction to Incident Command System for Higher Education (IS-100.HE) as provided by the Emergency Management Institute at the Federal Emergency Management Agency (FEMA).
8. Comply with compulsory minimum entry-level training standards approved by the department.
  - a. Every campus security officer hired before January 31, 2011, is required to comply with the compulsory minimum entry-level training standards within 365 days of the effective date of this regulation. Every campus security officer hired on or after January 31, 2011, is required to comply with the compulsory minimum entry-level training standards within 180 days of the date of hire.
  - b. The compulsory minimum entry-level training standard shall consist of modules of content developed and approved by the department. Such training shall include but not be limited to:
    - (1) The role and responsibility of campus security officers;
    - (2) Relevant state and federal laws;
    - (3) School and personal liability issues;
    - (4) Security awareness in the campus environment;
    - (5) Mediation and conflict resolution;
    - (6) Disaster and emergency response; and
    - (7) Behavioral dynamics.
  - c. The compulsory minimum entry-level training standard shall include a test for each module approved and provided by the department with a minimum passing grade of 70% on each module. Any officer not receiving a minimum grade of 70% on each module shall, at the discretion of the approved instructor, be given remedial training and thereafter the opportunity to be tested again on the questions incorrectly answered on the first attempt. If this option is utilized, the initial test score

shall be recorded with an asterisk followed by the signature of the approved instructor who provided the remedial training. The approved instructor's signature shall be accepted as verification that the officer successfully answered enough of the questions missed on the initial test to achieve a passing score of 70%. A second unsuccessful test, subsequent to remedial training, shall result in a grade of "FAIL" after which the officer may, at the discretion of the employing college, university, or PSS business be enrolled in future training for the failed module.

9. Submit to the department a properly completed and signed application for certification from the employing college, university, or PSS business in a format provided by the department.

B. All costs associated with meeting the certification requirements are the responsibility of the employer.

C. The department may grant an extension of the time limit for completion of the compulsory minimum entry-level training and certification standards under the following documented conditions:

1. Illness or injury;
2. Military service;
3. Special duty required and performed in the public interest;
4. Administrative leave, full-time educational leave, or suspension pending investigation or adjudication of a crime; or
5. Any other reasonable situation documented by the employing college, university, or PSS business.

## **6VAC20-270-40. Certification procedures.**

A. The department will notify the applicant for campus security officer certification and the designated campus security point of contact for the employing college, university, or PSS business that the campus security officer is certified in accordance with this chapter after the following conditions are met:

1. Notification to the department by the designated campus security point of contact that the applicant for campus security officer certification has successfully met the following compulsory minimum entry-level training and certification standards:

- a. The total of modules that comprise the compulsory minimum entry-level training as required by this chapter;
- b. Complete background investigation as required by this chapter;
- c. First-aid training consistent with the standard set by the employing college or university; and
- d. Completion of the online course Introduction to Incident Command System for Higher Education (IS-100.HE) as provided by the Emergency Management

Institute at the Federal Emergency Management Agency (FEMA) and as indicated by the department.

2. Receipt by the department of application for certification signed by the designated point of contact for the employing college, university, or PSS business.

B. If a campus security officer seeking certification is denied by the department, the department will notify the designated campus security point of contact for the employing college, university, or PSS business and the applicant in writing, outlining the basis for the denial and the process for appeal of the decision to deny.

C. The department shall maintain a current database of certified campus security officers as well as relevant training records.

D. Certification shall be for a period not to exceed 24 months.

### **6VAC20-270-50. Suspension of certification.**

A. Campus security officers will only be certified while employed by a college, university, or a PSS business while assigned to a college or university.

B. Certification of the campus security officer will be suspended upon the termination of the officer's employment with the college, university, or PSS business. For the purposes of this chapter, a previously certified campus security officer's status shall be changed to suspended upon the department receiving notice that the officer is no longer employed by a college, university, or PSS business.

C. Upon obtaining employment at another college, university, or PSS business, a previously certified campus security officer will not be required to repeat the compulsory minimum entry-level training provided the officer's employment starts within the two-year period of the previous certification.

### **6VAC20-270-60. Training waiver for experienced officers.**

A. Subject to the approval of the department, a compulsory minimum entry-level training waiver may be obtained for experienced campus security officers with a minimum of five years of experience who successfully complete the module tests with a minimum score of 70% on each test. The application for a waiver shall be submitted on the form prescribed by the department and must contain the signature of the designated campus security point of contact.

B. If any module test grade is less than 70%, the experienced officer shall be required to complete the prescribed compulsory minimum entry-level training standards as outlined in this chapter.

### **6VAC20-270-70. Educational requirement waiver for experienced officers.**

Subject to the approval of the department, an educational requirement waiver may be obtained for campus security officers who have been continuously employed in that capacity at a college, university, or PSS business under

contract to a college or university for a minimum of five years prior to January 31, 2011.

### **6VAC20-270-80. Standards of conduct.**

A campus security officer shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter;

2. Maintain a valid mailing address with the employing college, university, or PSS business at all times. Written notification of any address change shall be submitted to the campus security point of contact for the employing college, university, or PSS business no later than 10 days after the effective date of the change;

3. Inform the designated campus security point of contact for the employing college, university, or PSS business in writing within 72 hours or the beginning of the next work day, whichever comes first, after an arrest for any felony or misdemeanor;

4. Inform the designated campus security point of contact for the employing college, university, or PSS business in writing within 72 hours or the beginning of the next work day, whichever comes first, after having been convicted of any felony or misdemeanor; and

5. Inform the designated campus security point of contact for the employing college, university, or PSS business in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the statutes or regulations of that jurisdiction.

### **6VAC20-270-90. Recertification requirements.**

A. Applications for recertification must be received by the department prior to certification expiration. It is the responsibility of the campus security officer employer to ensure recertification applications are filed with the department. A valid certification as a campus security officer is required in order to remain eligible for employment as a campus security officer. If the campus security officer has met the required in-service training requirements and the required in-service training documents and recertification application are on file with the department prior to expiration, the campus security officer is deemed recertified and may continue to operate in the campus security officer capacity.

B. Applicants for recertification must have completed 16 hours of in-service training during each two-year period after initial certification. The in-service training must be directly related to the duties of the campus security officer, to include a legal update and other relevant topics approved by the department.

C. Individuals whose certification is expired shall comply with the compulsory minimum entry-level training and certification standards set forth in this chapter.

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D. The department, subject to its discretion, retains the right to grant an extension of the recertification time limit and requirements under the following conditions:

1. Illness or injury;
2. Military service;
3. Administrative leave, full-time educational leave, or suspension pending investigation or adjudication of a crime; or
4. Any other reasonable situation documented by the employing college, university, or PSS business.

E. Request for extensions shall:

1. Be submitted in writing and signed by the designated campus security point of contact for the employing college, university, or PSS business prior to the expiration date of the time limit for completion of the requirement; and
2. Indicate the projected date for the completion of the requirement.

## **6VAC20-270-100. Decertification and appeal procedure.**

A. The department may decertify a campus security officer who has:

1. Been convicted of or pled guilty or no contest to a felony or any offense that would be a felony if committed in Virginia;
2. Failed to comply with or maintain compliance with compulsory minimum entry-level training and certification standards;
3. Refused to submit to a drug screening or has produced a positive result on a drug screening reported to the employer where the positive result cannot be explained to the employer's satisfaction;
4. Lied on or failed to provide required information on an employment application for the current position; or
5. Been terminated for just cause by the employing college, university, or PSS business.

B. Such campus security officer shall not have the right to serve as a campus security officer within this Commonwealth until the department has reinstated the certification.

C. The findings and the decision of the department may be appealed to the board provided that written notification is given to the attention of the Director, Department of Criminal Justice Services, within 30 days following the date notification of the decision was served or the date it was mailed to the respondent, whichever occurs first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

## **6VAC20-270-110. Instructor approval.**

A. The department may approve instructors to deliver the compulsory minimum entry-level training for campus security officers and may revoke such approval for cause.

B. Each person applying for instructor approval shall:

1. Submit an instructor application, signed by the designated point of contact of the employing college, university, PSS business, or private security services training school on the form prescribed by the department;

2. Have a high school diploma or equivalent (GED) or have passed the National External Diploma Program;

3. Have a minimum of:

a. Two years of management or supervisory experience as a campus security officer or supervisory experience with any federal, state, county, or municipal law-enforcement agency in a related field; or

b. Three years of general experience as a campus security officer or with a federal, state, or local law-enforcement agency in a related field; and

4. One year experience and demonstrated success as an instructor or teacher in an accredited educational institution or law-enforcement or security agency.

C. Each person applying for instructor approval shall file with the department a properly completed application provided by the department. The department maintains the right to require additional documentation of instructor qualifications.

D. The department will evaluate qualifications based upon the justification provided.

E. Upon completion of the instructor application requirements, the department may approve the instructor for an indefinite period.

F. Each instructor shall conduct himself in a professional manner and the department may revoke instructor approval for cause.

G. The department has the authority to accept a waiver application with supporting documentation demonstrating related training or experience that meets or exceeds standards established by the department within the three years immediately preceding the date of the instructor application.

## **6VAC20-270-120. Instructor standards of conduct.**

An instructor shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter;

2. Maintain a current mailing address, phone number, and email address with the department. Written notification of any address, phone number, or email change shall be received by the department no later than 30 days after the effective date of the change;

3. Inform the department in writing within 72 hours or the beginning of the next work day, whichever comes first, after an arrest for any felony or misdemeanor;

4. Inform the department in writing within 72 hours or the beginning of the next work day, whichever comes first, after having been convicted of any felony or misdemeanor;

5. Inform the department in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the statutes or regulations of that jurisdiction;
6. Conduct compulsory minimum entry-level trainings pursuant to requirements established in this chapter;
7. Notify the department within 10 calendar days following termination of employment; and
8. Be professional in conduct.

**6VAC20-270-130. Instructor administrative requirements.**

A. Campus security officer instructors shall ensure that compulsory minimum entry-level trainings are conducted in accordance with requirements established in this chapter. Adherence to the administrative requirements, attendance, and standards of conduct are the responsibility of the instructor.

B. Administrative requirements.

1. An approved instructor must submit a notification to conduct a compulsory minimum entry-level training in a manner approved by the department. All notifications shall be received by the department no less than 30 calendar days before the beginning of each compulsory minimum entry-level. The department may waive the 30-day notification at its discretion.
2. The instructor must submit notification of any changes to the date, time, location, or cancellation of a future training to the department. This notice must be received by the department at least 24 hours in advance of the scheduled starting time of the training. In the event that a session must be cancelled on the scheduled date, the department must be notified as soon as practical.
3. A test approved by the department shall be administered at the conclusion of each module of the compulsory minimum entry-level training. The student must attain a grade of 70% on each module. All test documents must be returned to the department with an accompanying training roster in a manner approved by the department.
4. The instructor shall submit tests and training rosters to the department. These shall be received by the department within seven calendar days, or if mailed, postmarked no later than five business days following the training completion date.
5. Instructors will conduct trainings utilizing the curriculum developed or approved by the department, including, at a minimum, any compulsory minimum entry-level trainings modules established pursuant to this chapter. Instructors must maintain accurate and current information on relevant laws and make necessary changes to the curriculum. It is the instructor's responsibility to assure they have the most recent curriculum supplied or approved by the department.

6. The instructor shall permit the department to inspect and observe any training.
7. Compulsory minimum entry-level trainings conducted not in accordance with the Code of Virginia and this chapter is invalid.

C. Attendance.

1. Campus security officers enrolled in an approved training are required to be present for the modules required for each training.
2. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed. Such training must be completed by the certification process deadline and cannot be used to extend that deadline. Individuals not completing the compulsory minimum entry-level training within this period may not be certified or recertified and may be required to complete the entire training.
3. Each individual attending an approved training shall comply with the regulations promulgated by the department and any other rules applicable to the training. If the instructor considers a violation of the rules detrimental to the training of other students or to involve cheating on tests, the instructor may expel the individual from the training. The instructor shall immediately report such action to the designated campus security point of contact for the employing college, university, PSS business, or private security services training school and the department.

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

FORMS (6VAC20-270)

- [Campus Security Officer Certification Application \(1/11\).](#)
- [Campus Security Officer Training Class Request \(1/11\).](#)
- [Campus Security Officer Recertification Application \(1/11\).](#)
- [Campus Security Officer Permission for Extension \(1/11\).](#)
- [Campus Security Officer Instructor Application \(1/11\).](#)
- [Campus Security Officer Instructor Approval Waiver Application \(1/11\).](#)

VA.R. Doc. No. R11-2165; Filed August 8, 2012, 10:47 a.m.



## TITLE 8. EDUCATION

### Part I Definitions

#### STATE BOARD OF EDUCATION

##### Final Regulation

Title of Regulation: **8VAC20-70. Regulations Governing Pupil Transportation (amending 8VAC20-70-10, 8VAC20-70-40, 8VAC20-70-100, 8VAC20-70-110, 8VAC20-70-130 through 8VAC20-70-200, 8VAC20-70-220, 8VAC20-70-230, 8VAC20-70-280, 8VAC20-70-300, 8VAC20-70-330, 8VAC20-70-350 through 8VAC20-70-380, 8VAC20-70-420, 8VAC20-70-430, 8VAC20-70-450, 8VAC20-70-460, 8VAC20-70-480, 8VAC20-70-490, 8VAC20-70-510, 8VAC20-70-525; adding 8VAC20-70-31, 8VAC20-70-271, 8VAC20-70-411, 8VAC20-70-435; repealing 8VAC20-70-310).**

Statutory Authority: §§ 22.1-16, 22.1-176, and 22.1-177 of the Code of Virginia.

Effective Date: September 28, 2012.

Agency Contact: Melissa L. Luchau, Office of Policy and Communications, Department of Education, P.O. Box 2120, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email melissa.luchau@doe.virginia.gov.

##### Summary:

*The amendments (i) update definitions to conform to the 2005 and 2010 National School Transportation Specifications and Procedures; (ii) permit students to stand during school bus rides only under temporary emergency conditions and for short distances as identified in local school board policy; (iii) amend the required minimum frequency of school bus maintenance inspections by extending the timeframe between inspections and describing the operational assessments that will be conducted by the Department of Education; (iv) eliminate the requirement that bus collisions be reported when no one is injured and damage is less than \$1,500; (v) require review of school bus routes, school sites, and safety of pupils at designated school bus stops at least once a year and as changes occur; (vi) add language stating that special needs children are entitled to transportation to school; (vii) require new transportation directors/supervisors employed by school divisions to complete the "Train the Trainer" class conducted by the Department of Education; and (viii) require school bus driver instructors to meet the requirements of a school bus driver and have at least two years of experience.*

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.

##### 8VAC20-70-10. Definitions.

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

"Classroom instruction" means training provided by a qualified driver instructor through lectures, demonstrations, audio-visual presentations, computer-based instruction, driving simulation devices, or similar means. Instruction occurring outside a classroom is included if it does not involve actual operation of a school bus and its components by the student.

"Color-black" means federal standard No. 595, black.

"Color-yellow" means national school bus yellow SBMTC School Bus Manufacturers Technical Council (SBMTC) color standard 008.

"Multifunction School Activity Bus (MFSAB)" [~~or "school activity bus"~~] means a school bus whose purposes do not include transporting students to and from home or school bus stops as defined in 49 CFR 571.3. This subcategory of school bus meets all Federal Motor Vehicle Safety Standards (FMVSS) for school buses and meets all regulations for school buses, except the traffic control devices, [~~identification,~~] color, use of cruise control, and seating requirements.

"Nonconforming bus" means any vehicle designed to carry more than 10 passengers that is used to transport children to or from school or school-related activities that does not meet the federal standards, 49 CFR Part 571, specific to school buses or multifunction school activity buses. These vehicles are not approved for transporting students to and from school or school-related activities.

"School bus" means any motor vehicle ~~described in this chapter as "Type A1 and A2," "Type B1 and B2," "Type C," or "Type D," which is designed and used for the transportation of pupils, which is other than a station wagon, automobile, truck, or commercial bus that is (i) designed and used primarily for the transportation of pupils to and from public, private, or religious schools, or for the transportation of pupils who are physically handicapped to and from a sheltered workshop;~~ (ii) painted yellow with the words "School Bus" in black letters of a specified size on the front and rear; and ~~which is (iii) equipped with the required warning devices as stated prescribed in § 46.2-100 § 46.2-1090 of the Code of Virginia. A yellow school bus may have a white roof provided such vehicle is painted in accordance with regulations and specifications of the Department of Education.~~

~~Note: This definition includes school buses owned and operated by school boards, private contractors, local governments, and transit systems that are used for the transportation of public school pupils.~~

"Specially equipped bus" means a school bus designed, equipped, or modified to accommodate students with special needs.

"Type A school bus" means a ~~van~~ conversion of bus constructed utilizing a cutaway front-section vehicle with a left side driver's door. ~~The entrance door is behind the front wheels.~~ This definition includes two classifications. Type A1, with a Gross Vehicle Weight Rating (GVWR) ~~less than or equal to 10,000~~ of 14,500 pounds or less; and Type A2, with a GVWR greater than ~~10,000~~ 14,500 pounds, but less than or equal to 21,500 pounds.

"Type B school bus" means a bus with a body constructed utilizing a stripped chassis. The entrance door is behind the front wheels. This definition includes two classifications: Type B1, with a GVWR ~~less than or equal to~~ of 10,000 pounds or less; and Type B2, with a GVWR greater than 10,000 pounds.

"Type C (Conventional) school bus" means ~~a bus with a body constructed utilizing a~~ installed upon a flat-back cowl chassis with a hood and front fender assembly fenders. The entrance door is behind the front wheels. This definition shall include two classifications: Type C1, with a GVWR range of 17,500 pounds with a design seating capacity range from 16 to 30 persons; and Type C2 with a GVWR of more than 21,500 pounds [ with a design seating capacity for designed for carrying ] more than 30 persons. The engine is in front of the windshield and the entrance door is behind the front wheels. Both Type C1 and Type C2 must be equipped with dual rear tires.

"Type D school bus" means a bus with a body constructed utilizing a stripped chassis. The entrance door is ahead of the front wheels. This bus is also known as a rear engine or front engine transit style school bus.

"Vehicle" means any vehicle owned or operated by, or owned or operated by any person under contract by, a county, city, town, or school board in which any school pupils or personnel are transported at public expense from any public school [ or public school activity ].

**8VAC20-70-31. Driving [ ~~more than 13 hours in a 24-hour period prohibited time~~ ],**

~~[ Pursuant to § 46.2-812 of the Code of Virginia, no person shall operate any school bus, school activity bus, or school activity vehicle for more than 13 hours in any period of 24 hours or for a period that when added to the time such person may have driven any vehicle in any other state would make an aggregate of more than 13 hours in any 24-hour period. Drivers of other commercial vehicles shall report all hours driven prior to operating a school bus, school activity bus, or school activity vehicle.~~

~~No owner of any vehicle shall cause or permit a vehicle to be driven in violation of this section.~~

Driving time for operators of any school bus, school activity bus, or school activity vehicle shall be pursuant to § 46.2-812 of the Code of Virginia. ]

**8VAC20-70-40. Seating.**

The number of pupils who may ride a school bus shall be determined by the total number who can be seated on the seat cushion facing forward, safely seated within the seating compartment, and shall not exceed the manufacturer's capacity. ~~During the first 30 instructional days of the school year standees may be permitted for short distances in the aisle back of the driver's seat.~~ Pupils may not be permitted to stand ~~after the first 30 instructional days, except under unforeseen temporary emergency conditions and for short distances as identified [ in policy ] by the local school board.~~

**8VAC20-70-100. Passenger restraint belts.**

Pupils riding in school buses required by federal law to be equipped with passenger restraint belts shall wear them as required by state or federal law while the bus is in motion. ~~See Federal Motor Vehicle Safety Standards No. 209 and 210.~~

**8VAC20-70-110. Pupil ~~rider~~ transportation safety instruction.**

~~Pupil rider safety transportation instruction shall be included in the school curriculum, including demonstration and practices of safety procedures.~~

1. At the Pre-K-1 grade levels, initial safety training shall occur during the first week of school with additional training on a periodic basis during the year. ~~[ Students in grades 9 through 12 shall receive additional training on the rules for motorists approaching a stopped school bus and on safe following distances when operating a personal vehicle. ]~~

2. Emergency exit drills shall be practiced by all pupil riders at least twice a year, the first occurring during the first 30 instructional days and the second in the second semester and shall include the school bus driver. Summer session evacuation drills should be performed as needed.

3. A copy of bus rider safety rules shall be sent to parents at the beginning of the school year. The information shall include a request that parents or their designee accompany their young children to and from the bus stop.

**8VAC20-70-130. Maintenance inspection.**

~~[ All school buses and, school activity vehicles, and school vehicles used to transport public school pupils to and from school and school activity events shall be inspected and maintained undergo a Level 2 maintenance inspection as prescribed in the Preventive Maintenance Manual for Virginia School Buses by competent mechanics immediately before being used in the fall for each new school year and a Level 1 inspection at least once every 30 operating days or every 2,500 miles traveled 45 calendar days after the start of the new school year. The inspections and maintenance shall be conducted in accordance with provisions of the "Preventive~~

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~~Maintenance Manual for Virginia School Buses, March 2003" (November 2008) and recorded on the prescribed inspection forms or in a format approved by the Department of Education. If the inspection and maintenance are not made in a shop operated by the school board or the local governing body, the school board shall designate one or more inspection centers to make the inspections and require a copy of the results of the inspections to be furnished to the division superintendent. School division compliance with the foregoing maintenance inspection requirement shall be subject to verification by the Department of Education.~~

~~Subject to funds being available, the Department of Education shall conduct random operational assessments during the school year of school divisions' pupil transportation operations to ensure statutes, regulations, and specifications are being met. The Department of Education shall establish procedures for conducting the random operational assessments.~~

~~Maintenance and service personnel shall be encouraged to attend approved workshops or training institutes and shall receive all necessary service and maintenance publications for equipment serviced.~~

All school buses and school activity buses used to transport public school pupils to and from school and school activity events shall be inspected and maintained by competent mechanics at least once every 45 school days, with "school days" as determined by the school division's approved yearly calendar or modifications in the calendar as approved by the division superintendent or designee, or every 5,000 miles. Any bus that is removed from service or deadlined so as to disrupt the scheduled maintenance shall be inspected prior to being returned to service. At no point shall any bus go without an inspection during the school semester and such inspections shall be no more than 90 school days apart excluding summer sessions. The inspections and maintenance shall be conducted in accordance with provisions of the Preventive Maintenance Manual for Virginia School Buses (September 2012) and recorded on the prescribed inspection forms or in a format approved by the Department of Education. Additional Original Equipment Manufacturer (OEM) inspection and maintenance recommendations should be maintained during the service life of each bus to ensure safety and warranty requirements are met. Maintenance consideration should be given to buses operated during the summer session. If the inspection and maintenance are not made in a shop operated by the school board or the local governing body, the school board shall designate one or more inspection centers to make the inspections and require a copy of the results of the inspections to be furnished to the division superintendent. School division compliance with the foregoing maintenance inspection requirements shall be subject to verification by the Department of Education.

Subject to funds being available, the Department of Education shall conduct operational assessments of school

divisions' pupil transportation operations on an ongoing basis to ensure applicable statutes, regulations, and specifications are being met. The Department of Education shall establish procedures for conducting the operational assessments and shall conduct the assessments in school divisions on a periodic cycle as resources permit. As part of the operational assessments, the Department of Education shall provide technical assistance to school divisions in a manner that will assist them with achieving and maintaining compliance with applicable statutes, regulations, and specifications.

Maintenance and service personnel shall be encouraged to attend approved workshops or training institutes and shall receive all necessary service and maintenance publications for equipment serviced. ]

## **8VAC20-70-140. ~~Crash/incident~~ Crash reporting.**

A report, on forms or in a format furnished by the Department of Education, of any crashes ~~or incidents~~ involving school buses, pupils, and personnel who ride school or activity buses (including injury or death while crossing the road, waiting at bus stops, etc.) shall be sent to the Pupil Transportation Service, Department of Education by the division superintendent or designee at least once a month. The report shall give the apparent cause of the crash ~~or incident~~ and the extent of injuries to pupils or others. The division superintendent or designee shall notify the Pupil Transportation Service of any school bus crash ~~or incident~~ involving serious injuries, requiring professional medical treatment, or death within the next working day from the date of the crash ~~or incident~~.

~~A vehicle crash occurs when property damage is [ \$1,000 \$1,500 ] or more or when persons are injured. An incident occurs when property damage is \$999 or less and there are no injured individuals.~~

The Department of Education shall publish on its website an annual report of the number of crashes involving school buses, pupils, and personnel who ride school or activity buses (including incidents of injury or death while crossing the road, waiting at bus stops, etc.) in each division.

## **8VAC20-70-150. Route schedule.**

All school buses in operation shall be scheduled to maximize safety and efficiency. The schedule shall show the time the bus starts in the morning, the time it leaves each point at which pupils are picked up, ~~and~~ the time of arrival at school, and the time of drop off at home in the afternoon. One copy of such schedule shall be kept in the bus [ ~~and secured when the bus is unattended~~ ], and one copy shall be kept in the office of the division superintendent or designee [ and shall meet student records and information security requirements as stated in federal, state, and local policy ].

## **8VAC20-70-160. Review of routes.**

School bus routes, school sites, and safety of pupils at designated school bus stops shall be reviewed at least [ ~~once twice each year, once each semester~~ a year and as changes

occur ]. [ ~~Bus routes shall be reviewed for safety hazards~~ ], [ ~~and fuel conservation, and to assure~~ ] maximum [ ~~the most efficient~~ Routes shall be reviewed for safety hazards, fuel conservation, and to assure ] the most efficient use of buses. Local school administrators shall evaluate the safety of pupils at bus stops periodically and shall at the request of the local school board report the results annually to the school board. Hazardous or unusual situations, to include railway crossings, shall be marked on the route sheet and made available to drivers and substitutes.

A written vehicular and pedestrian traffic control plan for each existing school site shall be reviewed annually for safety hazards. All new school site plans shall include provisions that promote vehicular and pedestrian safety.

**8VAC20-70-170. Railway crossings.**

School buses shall stop, as required by law, at railway grade crossings. ~~The~~ School buses equipped with a nonsequential lighting system must have these lighting systems deactivated when approaching a railroad grade crossing and the 4-way hazard lights shall be activated [ when approaching the railway grade crossing ] and shall be deactivated before crossing the track. The bus driver shall turn off all noisy equipment, open the entrance door of the bus and determine when it is safe for the vehicle to cross the railroad tracks. The entrance door shall be closed when the bus is in motion. No stop need be made at any grade crossing where traffic is directed by a ~~police~~ law-enforcement officer or a ~~green~~ traffic-control signal as stated in § 46.2-886 of the Code of Virginia.

**8VAC20-70-180. ~~Driver reports~~ Ridership and miles report.**

School boards shall require that a report on the number of pupils transported and miles traveled be ~~made by all school bus drivers to principals or other designated school officials~~ submitted to designated school officials.

[ **8VAC20-70-190. Policies.**

Local school boards shall adopt policies, consistent with provisions of the Code of Virginia, before establishing a practice of collecting transportation fees from pupils or receiving contributions from other sources for activities sponsored by schools under their authority. No pupil whose parent or guardian is financially unable to pay the pro rata cost of the trip may be denied the opportunity to participate. See § 22.1-176 of the Code of Virginia. Each disabled child enrolled in and attending a special education program provided by the school division shall be entitled to transportation at no cost if such transportation is necessary to enable such child to obtain the benefit of educational programs and opportunities. See § 22.1-221 A of the Code of Virginia. ]

**8VAC20-70-200. Identification and lights covering.**

The lettered identification and traffic warning lights on the front and rear of school buses shall be covered with opaque

detachable material when ~~they~~ school buses are used for purposes other than to transport pupils on regular routes to and from school, ~~or~~ on special trips to participate in contests of various kinds, ~~and~~ or for supplementary education purposes as required by § 22.1-183 of the Code of Virginia. This does not apply when the bus is being used to transport elderly or mentally or physically handicapped persons.

**8VAC20-70-220. Passage restriction.**

No object shall be placed on any bus carrying passengers that will restrict the access to any exit [ ~~or~~ ] restrict the freedom of motion of the driver for proper operation of the vehicle [ ~~or where displacement of such objects may result in personal injury to passengers~~ ]. [ Drivers shall be observant of any objects that may cause injury. ]

**8VAC20-70-230. Required materials.**

All vehicles used primarily to transport students to and from school or school-related activities shall carry reflective triangles, first aid kit, body fluid clean-up kit and fire extinguisher.

**8VAC20-70-271. Records retention.**

School division documents related to pupil transportation shall be retained in accordance with local policy and guidelines from the Virginia State Library.

Part III

Requirements for School Bus Drivers

**8VAC20-70-280. Requirements for school bus drivers both for employment and continued employment.**

~~Sections Section 22.1-178, 46.2-339, and 46.2-340~~ of the Code of Virginia ~~require~~ requires drivers of school and activity buses to:

1. Have a physical examination of a scope prescribed by the Board of Education with the advice of the Medical Society of Virginia and furnished on a form prescribed by the Board of Education showing the results of such examination.

a. No person shall drive a school bus unless that person is physically qualified to do so and has submitted a School Bus Driver's Application For Physician's Certificate signed by the applicant and the doctor or a licensed nurse practitioner for the applicable employment period.

b. The physical form describes the basic physical qualifications for school bus drivers; however, the examining physician or licensed nurse practitioner shall make the final determination of the individual's physical capacity to operate a school bus based upon their assessment of the individual's overall physical condition.

2. Furnish a statement or copy of records from the Department of Motor Vehicles showing that the person, within the preceding five years, has not been convicted of a charge of driving under the influence of intoxicating liquors or drugs, convicted of a charge of refusing to take a blood or breath test, convicted of a felony, or assigned to



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any alcohol safety action program or driver alcohol rehabilitation program pursuant to § 18.2-271.1 of the Code of Virginia or, within the preceding 12 months, has not been convicted of two or more moving traffic violations or has not been required to attend a driver improvement clinic by the Commissioner of the Department of Motor Vehicles pursuant to ~~§ 46.2-497~~ § 46.2-498 of the Code of Virginia.

3. Furnish a statement signed by two reputable persons who reside in the school division or in the applicant's community that the person is of good moral character.

4. Exhibit a license showing the person has successfully undertaken the examination prescribed by § 46.2-339 of the Code of Virginia.

5. Be at least 18 years old.

6. Submit to testing for alcohol and controlled substances that is in compliance with the Omnibus Transportation Employee Testing Act of 1991 (Public Law 102-143, Title V) as amended and that is in compliance with 49 CFR Parts 40 and 382.

## **8VAC20-70-300. Required documents.**

The documents required pursuant to subdivisions 1 and 2 of 8VAC20-70-280 shall be furnished annually prior to the anniversary date of the employment to operate a school bus.

## **8VAC20-70-310. Filing. (Repealed.)**

~~The documents required pursuant to this section shall be filed with, and made a part of, the records of the school board employing such person as a school bus operator.~~

## **[ 8VAC20-70-330. Health certificate.**

As a condition to employment, every school and activity bus driver shall submit a certificate signed by a licensed physician or nurse practitioner stating that the employee appears free of communicable tuberculosis. The school board may require the submission of such certificates annually, or at such intervals as it deems appropriate, as a condition to continued employment. ]

## **8VAC20-70-350. Training.**

No person shall operate a school or activity bus transporting pupils unless the person has:

1. Received classroom, demonstration, and behind-the-wheel instruction in accordance with a program developed by the Department of Education pursuant to § 22.1-181 of the Code of Virginia.

2. Completed a minimum of 24 classroom hours and 24 hours of behind-the-wheel training. A minimum of 10 of the 24 hours of behind-the-wheel time shall involve the operation of a bus with pupils on board while under the direct on-board supervision of a designated bus driver trainer. ~~Drivers of Type D buses must complete eight additional hours of training behind the wheel. All drivers shall receive training in the operation of a Type D bus and transportation of students with special needs. buses~~

representative of the type used in the school division in which they will be employed and in the transportation of students with special needs. Classroom instruction means training provided by a qualified driver instructor through lectures, demonstrations, audio-visual presentations, computer-based instruction, driving simulation devices, or similar means. Instruction occurring outside a classroom [ ~~is included~~ qualifies as classroom instruction ] if it does not involve actual operation of a school bus and its components by the [ ~~student~~ trainee ]. Behind-the-wheel training does not include time spent riding in a school bus or observing [ the ] operation of a school bus when the [ ~~student~~ trainee ] is not in control of the vehicle.

The superintendent or his designee shall maintain a record showing that the applicant has completed the training and has been approved to operate a school or activity bus.

3. New transportation directors/supervisors employed by school divisions shall complete the "Train the Trainer" class conducted by the Department of Education within a year after being employed in this position.

## **[ ~~8VAC20-70-359. Requirements for school bus driver instructors.~~**

~~Instructors must meet the requirements of a school bus driver and have at least two years experience operating a Class B type vehicle. ]~~

## **8VAC20-70-360. In-service training.**

In-service training ~~(at least two hours before opening [ before the opening of ] schools [ the school year and ] at least two hours [ during the second half of the school ] year) [ (at least two hours before the opening of the school year and at least two hours during the second half of the school year ) ]~~ devoted to improving the skills, attitudes, and knowledge, including orientation to maximize benefits of using safety programs and safety components shall be provided to all school or activity bus drivers. In-service training [ shall should ] include, but is not limited to, the following topics: basic motor vehicle laws, related administrative codes, pre-trip inspection procedures, student discipline and conduct, drug and alcohol testing procedures and policies, fuel conservation, safety, emergency procedures, student information and confidentiality, and local policies and procedures as required by the division's transportation department. A copy of the agenda for each in-service training event shall be on file [ in the school division ].

## **8VAC20-70-370. Supervision.**

The drivers of school and activity buses shall be under the general direction and control of the division superintendent or designee, and shall also be accountable to the principal of the school to which pupil transportation is provided.

## **8VAC20-70-380. Pre-trip safety inspection.**

~~The~~ Prior to the initial transporting of children each day, the drivers of school and activity buses shall perform a daily pre-trip safety inspection of the vehicle prior to transporting

children. The items checked and recorded shall be at least equal to the pre-trip inspection procedure as ~~prescribed in the Preventive Maintenance Manual for Virginia School Buses [ (November 2008) ]~~ (September 2012) issued by the Department of Education.

**8VAC20-70-411. Driver trainers.**

[ ~~Driver Behind-the-wheel driver~~ ] trainers must meet the requirements of 8VAC20-70-280 and 8VAC20-70-350 and [ ~~have at least two years experience operating a Class B vehicle~~ must have maintained a Class B license for two years prior to functioning as a behind-the-wheel driver trainer ].

**8VAC20-70-420. Instructor course certificate.**

Local school bus driver training instructors shall hold a certificate for completion of an instructor course conducted or approved by the Department of Education and shall attend a recertification course every five years. Certification expires at the end of calendar year five.

**8VAC20-70-430. Driver data.**

The names and driver license numbers of persons operating school and activity buses and other vehicles used to transport pupils shall be submitted to the Department of Motor Vehicles annually as required by § 46.2-340 of the Code of Virginia.

**8VAC20-70-435. Filing.**

The documents required pursuant to 8VAC20-70-280, 8VAC20-70-350, 8VAC20-70-360, 8VAC20-70-400, and 8VAC20-70-420 shall be filed with, and made a part of, the records of the school board employing such person as a school bus operator.

**8VAC20-70-450. Minimum ~~standards~~ specifications.**

Minimum ~~standards~~ specifications are applicable to all school buses and school activity ~~vehicles~~ buses, new or used, procured by purchase, lease or operational contract from another person or entity.

Part IV

General Requirements for School Buses in Virginia

**8VAC20-70-460. Specifications.**

It is the intent of the Board of Education to accommodate new equipment and technology that will better facilitate the safe and efficient transportation of students. When a new technology, piece of equipment, or component is desired to be applied to ~~the~~ a school bus, it must have the approval of the [ ~~Virginia~~ ] Department of Education and must meet the following criteria:

1. The technology, equipment, or component shall not compromise the effectiveness or integrity of any major safety system.
2. The technology, equipment, or component shall not diminish the safety of the interior of the bus.
3. The technology, equipment, or component shall not create additional risk to students who are boarding or

exiting the bus or are in or near the school bus loading zone.

4. The technology, equipment, or component shall not require undue additional activity or responsibility for the driver.

5. The technology, equipment, or component shall generally increase efficiency or safety, or both, of the bus, generally provide for a safer or more pleasant experience for the occupants and pedestrians in the vicinity of the bus, or shall generally assist the driver and make his many tasks easier to perform.

~~Buses~~ School buses and school activity ~~vehicles~~ buses must conform to the specifications relative to construction and design effective on the date of procurement. Any variation from the specifications, in the form of additional equipment or changes in style of equipment, without prior approval of the Department of Education, is prohibited. The Department of Education shall issue specifications and standards for public school buses to reflect desired technology or safety improvements for the then current model year.

**8VAC20-70-480. Bus identification.**

All publicly owned, part publicly owned, or contract school buses, transporting pupils to and from public school, shall be painted a uniform color, national school bus yellow, and shall be identified and equipped as outlined in the ~~standards and~~ specifications.

**8VAC20-70-490. Purchase.**

The responsibility for purchasing school buses and school activity ~~vehicles~~ buses which meet state and federal requirements rests with division superintendents and local school boards.

A schedule for the replacement of buses on a continuing basis shall be developed and implemented by each school division.

**8VAC20-70-510. Vehicles powered by alternative fuels.**

A. The Board of Education will continue to promote the use of alternative fuels for school buses. Any vehicle powered by alternative fuels will be subject to inspection and approval by the Virginia Department of Education.

B. Local school divisions, in consultation with the Department of Education, may purchase and use school buses using alternative fuels as covered in § 22.1-177 of the Code of Virginia.

C. Installation of alternative fuel tanks and fuel systems shall comply with all applicable Federal Motor Vehicles Safety Standards (FMVSS) 301, 49 CFR Part 571, and all applicable fire codes.

~~D. A sign with black letters on clear or school bus yellow background, indicating the type of alternative fuel being used, may be placed on the side of the bus near the entrance door. No sign shall be more than 4 3/4 inches long or more than 3 1/4 inches high.~~

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## Part V

### School Activity Vehicles Buses

#### **8VAC20-70-525. Regulations and standards.**

~~Activity vehicles~~ A. School activity buses owned or operated under contract by or for the school board, which are used solely to transport pupils to and from school activity events, shall comply with all applicable regulations and standards prescribed for school buses except as noted in this part. [ Pursuant to § 46.2-871 of the Code of Virginia, an activity bus transporting school pupils shall be operated at a safe, legal speed. ]

1. B. Exceptions, general regulations.

[ a. An activity vehicle 1. Pursuant to § 46.2-871 of the Code of Virginia, an activity bus transporting school pupils shall be operated at a safe, legal speed not in excess of 55 miles per hour. ]

b. [ 2. 1. ] No standees shall be permitted.

e. ~~The eight inch school bus lettered identification and traffic warning devices shall be removed by the local school division as required by §§ 46.2-100 and 46.2-1090 of the Code of Virginia. The name of the school division or individual school shall be placed on both sides of the vehicle.~~

~~2. [ 3. 2. ] Stops for the purpose of loading or discharging pupils on the travel portion of the highway shall not be permitted.~~

~~2. Exceptions, minimum standards for school buses in Virginia.~~

a. ~~School activity vehicles shall not be painted national school bus yellow.~~

b. ~~Other types of seats and increased spacing may be used provided all provisions of FMVSS 222, 49 CFR § 571.222, are met.~~

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

FORMS (8VAC20-70)

[School Bus Driver's Application for Physician's Certificate \(rev. 4/08\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (8VAC20-70)

[ ~~Preventive Maintenance Manual for Virginia School Buses,~~ ] March 2003 [ ~~November 2008,~~ Virginia Department of Education.

[Preventive Maintenance Manual for Virginia School Buses, Rev. September 2012, Virginia Department of Education.](#) ]

VA.R. Doc. No. R08-1020; Filed July 27, 2012, 4:03 p.m.

## Final Regulation

Titles of Regulations: **8VAC20-170. Regulations Governing Instructional Materials -- Selection and Utilization by Local School Boards (repealing 8VAC20-170-10).**

**8VAC20-220. Regulations Governing Textbook Adoption State Level (repealing 8VAC20-220-10 through 8VAC20-220-70).**

**8VAC20-230. Regulations Governing Textbook Adoption Local Level (repealing 8VAC20-230-10 through 8VAC20-230-40).**

**8VAC20-270. Regulations Governing Textbook Fund Management and Handling on Local Level (repealing 8VAC20-270-10 through 8VAC20-270-130).**

**8VAC20-720. Regulations Governing Local School Boards and School Divisions (adding 8VAC20-720-10 through 8VAC20-720-170).**

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

Effective Date: September 26, 2012.

Agency Contact: Melissa L. Luchau, Office of Policy and Communications, Department of Education, P.O. Box 2120, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email melissa.luchau@doe.virginia.gov.

#### Summary:

*This regulatory action repeals four existing sets of regulations relating to textbooks and instructional materials that have not been updated since 1980 and consolidates provisions concerning textbooks and instructional materials into the new Regulations Governing Local School Boards and School Divisions (8VAC20-720). The regulations (i) include provisions relating to the approval of textbooks, basal textbooks, contracts with textbook publishers, the distribution of textbooks and consumable materials, and the selection of instructional materials by local school divisions; and (ii) eliminate provisions that are unnecessary, outdated, or no longer required by the Code of Virginia.*

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

### CHAPTER 720

#### REGULATIONS GOVERNING LOCAL SCHOOL BOARDS AND SCHOOL DIVISIONS

#### **8VAC20-720-10. Definitions.**

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

"Textbooks" means print or electronic media for students use that serve as the primary curriculum basis for grade-level subject or course.

**8VAC20-720-20 through 8VAC20-720-150. (Reserved.)**

**8VAC20-720-160. Instructional materials.**

A. Local school boards shall be responsible for the selection ~~[ approval, ]~~ and utilization of instructional materials.

B. Local school boards shall adopt policies and criteria for the selection of instructional materials that shall include, at a minimum:

1. ~~[ Instituting a policy regarding the ]~~ The rights of parents to inspect, upon request, any instructional materials used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access, in accordance with the Protection of Pupil Rights Amendment, 20 USC § ~~[ 123h ]~~ 1232H, and its implementing regulation, 34 CFR Part 9;

~~[ 2. Establishing procedures for the reconsideration of challenged materials;~~

~~3. Placing special emphasis on the thorough evaluation of materials related to controversial or sensitive topics such as sex education, moral education, and religion; and~~

~~4. Including in the curriculum and scheduling options for students whose parents choose to withdraw them from class for the duration of the treatment of a sensitive or controversial topic. Parents should be required to justify their requests.~~

2. The basis upon which a person may seek reconsideration of the local school board's selection of instructional materials, including but not limited to materials that might be considered sensitive or controversial, and the procedures for doing so; and

3. Pursuant to § 22.1-253.13:7 of the Code of Virginia, clear procedures for handling challenged controversial materials. ]

**8VAC20-720-170. Textbooks.**

A. Textbook approval.

1. The Board of Education shall have the authority to approve textbooks for use in the public schools of Virginia.

2. In approving basal textbooks for reading in kindergarten and first grade, the board shall report to local school boards those textbooks with a minimum decodability standard based on words that students can correctly read by properly attaching speech sounds to each letter to formulate the word at 70% or above for such textbooks [ ; ] in accordance with § 22.1-239 of the Code of Virginia.

3. Any local school board may use textbooks not approved by the board provided the school board selects such books in accordance with this chapter.

[ 4. Contracts and purchase orders with publishers of textbooks approved by the board for use in grades 6-12 shall allow for the purchase of printed textbooks, printed textbooks with electronic files, or electronic textbooks separate and apart from printed versions of the same textbook. Each school board shall have the authority to

purchase an assortment of textbooks in any of the three forms listed in this subdivision. ]

B. Selection of textbooks by local school boards. Local school boards shall adopt procedures for the selection of textbooks. These procedures shall include, at a minimum, the following:

1. Appointment of ~~[ an ]~~ evaluation ~~[ committee committees ]~~ by the local school board to review and evaluate textbooks in ~~[ one or more each ]~~ of the subject areas.

2. Notice to parents that textbooks under consideration for approval will be listed on the school division's website and made available at designated locations for review by any interested citizens.

~~[ Provisions shall be made ]~~ 3. Opportunities ] for those reviewing such textbooks to present their comments and observations, if any, to the school board through locally approved procedures.

~~[ Actions that are necessary to assure ]~~ 4. Procedures to ensure ] appropriate consideration of citizen comments and observations ~~[ shall be taken and adequate time for such consideration shall be allowed ]~~.

~~[ 3. Use of selection ]~~ 5. Selection ] criteria ~~[ that has been approved by the local school board ]~~.

C. Purchasing Board of Education approved textbooks.

1. Local school divisions shall purchase textbooks approved by the Board of Education directly from the publishers of the textbooks by either entering into written term contracts or issuing purchase orders on an as-needed basis in accordance with § 22.1-241 of the Code of Virginia.

2. Such written comments or purchase orders shall be exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia) ~~[ and from any local adopted regulations or procedures ]~~.

D. Purchasing non-Board of Education approved textbooks. ~~[ Local school divisions shall purchase non Board of Education approved textbooks by either entering into written contracts or issuing purchase orders on an as needed basis in accordance with locally adopted procurement procedures or regulations that contain requirements for competitive purchasing or the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The purchase of textbooks other than those approved by the board is not exempt from the Virginia Public Procurement Act. ]~~

E. ~~[ Distribution of textbooks. Each school board shall provide, free of charge, such textbooks required for courses of instruction for each child attending public schools.~~

F. ] Certifications.

1. The division superintendent and chairperson of the local school board shall annually certify to the Virginia Department of Education that:

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a. All textbooks were selected and purchased in accordance with this chapter; and

b. The price paid for each textbook [ ~~was not in excess of that charged elsewhere in the United States,~~ ] in accordance with § 22.1-241 of the Code of Virginia.

2. The certification shall include a list of all textbooks adopted by the local school board.

VA.R. Doc. No. R08-1353; Filed August 3, 2012, 9:50 a.m.

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## TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

### STATE CORPORATION COMMISSION

#### Final Regulation

<p><b>REGISTRAR'S NOTICE:</b> 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.</p>
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**Title of Regulation:** **10VAC5-161. Mortgage Loan Originators (amending 10VAC5-161-10 through 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.

**Effective Date:** August 15, 2012.

**Agency Contact:** Nicholas C. Kyrus, Deputy Commissioner, Bureau of Financial Institutions, 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 final 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 final regulations also include various conforming and clarifying amendments based on federal 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 final regulations reflect certain amendments to Chapter 17 made by Chapters 52 and 187 of the 2012 Virginia Acts of Assembly, which became effective on July 1, 2012. The final 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, 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, are also included in the final regulations.*

*The final regulations made one change to the proposed regulations. In 10VAC5-161-60 C, the time period for mortgage loan originators to provide certain notices to the bureau was changed to five calendar days.*

AT RICHMOND, AUGUST 1, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2012-00022

Ex Parte: In re: Mortgage Loan Originators

#### ORDER ADOPTING REGULATIONS

On May 15, 2012, the State Corporation Commission ("Commission") entered an Order to Take Notice ("May 15 Order") of a proposal by the Bureau of Financial Institutions ("Bureau") to amend the Commission's regulations governing licensed mortgage loan originators, which are set forth in Chapter 161 of Title 10 of the Virginia Administrative Code, 10 VAC 5-161-10 et seq. The May 15 Order and proposed regulations were published in the Virginia Register of Regulations on June 4, 2012, posted on the Commission's website, and mailed to all licensed mortgage loan originators, licensed mortgage lenders, licensed mortgage brokers, and other interested parties. Licensees and other interested parties were afforded the opportunity to file written comments or request a hearing on or before June 20, 2012.

Comments on the proposed regulations were filed by Tyler Craddock, Executive Director of the Virginia Manufactured and Modular Housing Association; Rita E. Povich of Today's Mortgage LLC; and Nathan J. Burch, Claudia P. Hauyon, Joe G. Lucas, Jerry Quick, Stephen B. Shapbell, and Charles Lee Tighe, all of whom identified themselves as being with McLean Mortgage Corporation. Comments were also filed by Glen Bralley, Pamela Caldwell, Darius Jenkins, James Perkins, Brad R. Roche, and Leslie Wish. No requests for a hearing were filed.

Mr. Craddock asserted that the proposed language in 10 VAC 5-161-20 A is not consistent with Chapters 52 and 187 of the 2012 Acts of Assembly, which amended § 6.2-1701 of the Code of Virginia to require licensure for individuals who "engage in the business of a mortgage loan originator." Ms. Povich recommended that the time period specified in 10 VAC 5-161-60 C for providing certain notices to the Bureau remain at 15 days instead of being changed to one (1) business day. The other 12 commenters expressed

concern about 10 VAC 5-161-45 A, which would govern whether an individual shall be found to have the financial responsibility required by § 6.2-1706 of the Code of Virginia. These commenters generally contended that the proposal would cause numerous licensed mortgage loan originators to lose their licenses, and several commenters requested that the Commission grandfather such individuals so that they would not have to comply with this regulation. Some of these commenters also asserted that the dollar thresholds in subdivision A 1 for outstanding judgments, collection accounts, governmental liens, and delinquent accounts are too small or restrictive.

The Bureau considered the comments filed and responded to them in its Statements of Position, which the Bureau filed with the Clerk of the Commission on July 16, 2012. Based on its responses, the Bureau stated that it is amenable to adjusting the time period in 10 VAC 5-161-60 C to five (5) calendar days but otherwise recommends that the Commission adopt the proposed regulations.

NOW THE COMMISSION, having considered the proposed regulations, the comments filed, the Bureau's Statements of Position, the record herein, and applicable law, concludes that the time period set forth in 10 VAC 5-161-60 C of the proposed regulations should be modified so that licensed mortgage loan originators have five (5) calendar days to provide the required notices to the Bureau. The Commission further concludes that the proposed regulations, as modified, should be adopted with an effective date of August 15, 2012.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulations, as modified herein and attached hereto, are adopted effective August 15, 2012.
- (2) This Order and the attached regulations shall be posted on the Commission's website at: <http://www.scc.virginia.gov/case>.
- (3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.
- (4) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof, together with a copy of the attached 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 attached regulations, to all licensed mortgage loan originators, licensed mortgage lenders, licensed mortgage brokers, and such other interested parties as he may designate.

**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

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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.

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 1 a or b of this subsection, 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 1 of this subsection, 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 1 of this subsection 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



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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 five days] 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 subsection 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 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<sub>2</sub> 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 August 1, 2012, 1:49 p.m.

## TITLE 11. GAMING

### STATE LOTTERY BOARD

#### Final Regulation

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

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

Effective Date: September 26, 2012.

Agency Contact: Mitch Belton, Contract and Project Coordinator, State Lottery Department, 900 East Main Street, 9th Floor, Richmond, VA 23219, telephone (804) 692-7136, FAX (804) 692-7325, or email mbelton@valottery.com.

#### Summary:

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

#### Part I

#### General Parameters

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~"Professional services" means services within the practice of accounting, architecture, behavioral science, dentistry, insurance consulting, land surveying, landscape architecture, law, medicine, optometry, pharmacy, professional~~

~~engineering, veterinary medicine and lottery on line and instant ticket services.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55%	Prizes, as provided for in the rules of specific games
5.0%	Lottery retailer compensation
7.0%	Operating expenses (Administrative costs of the lottery shall not exceed 10% of

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total annual estimated gross revenues to be generated from lottery sales.)

33% Net income

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

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

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

a. The calculation of the 5.0% will be made for each instant or on line game.

b. The funding of this subaccount may be adjusted at any time by the board.

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

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

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

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

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

1. An initial conference consisting of an informal fact finding process will be conducted by the conference officer to attempt to resolve the issue to the satisfaction of the parties involved.

2. If an appeal is not resolved through the informal fact finding process, at the request of the appellant, a formal hearing will be conducted by the board in public. Following the close of the evidence, the board may consider its decision in closed session. The board will then issue its decision on the case.

3. Upon receipt of the board's decision on the case, the appellant may elect to pursue court action in accordance with the provisions of the Administrative Process Act (APA) relating to court review.

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

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

1. Receipt of a notice of the licensing action that is mailed in an envelope bearing a United States Postal Service postmark is presumed to have taken place not later than the third day following the day of mailing to the last known address of the applicant or licensed retailer. If the third day falls upon a day on which mail is not delivered by the United States Postal Service, the notice is presumed to have been received on the next business day. The "last known address" means the address shown on the application of an applicant or licensed retailer unless a more current address has been provided to the department by the applicant or licensed retailer.

2. The notice of appeal will be timely if it bears a United States Postal Service postmark showing mailing on or before the 30th day prescribed in subdivision 1 of this subsection A of this section.

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

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

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

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

C. The notice of appeal shall state:

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

2. The legal and factual basis for the appeal;

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

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

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

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

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

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

D. The conferences shall be informal.

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

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

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

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

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

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

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

E. Normally, the conference officer shall issue his decision within 15 days after the conclusion of an informal conference. However, for a conference with a court reporter, the conference officer shall issue his decision within 15 days after receipt of the transcript of the conference. In all cases the agency shall comply with the APA. The decision will be in

the form of a letter to the appellant summarizing the case and setting out his decision on the matter. The decision will be sent to the appellant by certified mail, return receipt requested.

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

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

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

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

4. State:

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

b. The legal and factual basis for the appeal;

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

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

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

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

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

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

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

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

1. The hearing will be electronically recorded and the recording will be kept until any time limits for any subsequent court appeals have expired.

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

3. The provisions of §§ 2.2-4020 through 2.2-4023 of the APA shall apply with respect to the rights and responsibilities of the appellant and of the department.

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

1. A copy of the board's written decision will be sent to the appellant by certified mail, return receipt requested. The original written decision shall be retained by the department and become a part of the case file.

2. The written decision will contain:

a. A statement of the facts to be called "Findings of Facts";

b. A statement of conclusions to be called "Conclusions" and to include as much detail as the board feels is necessary to set out the reasons and basis for its decision; and

c. A statement, to be called "Decision and Order," which sets out the board's decision and order in the case.

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

## Part IV Procurement

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

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

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

~~Informal Conference Request, 1996.~~

~~Formal Administrative Hearing Request, 1996.~~

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

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

VA.R. Doc. No. R12-3001; Filed August 9, 2012, 9:59 a.m.

### Final Regulation

Title of Regulation: **11VAC5-31. Licensing Regulations (amending 11VAC5-31-10 through 11VAC5-31-50, 11VAC5-31-70 through 11VAC5-31-100, 11VAC5-31-130, 11VAC5-31-150, 11VAC5-31-160, 11VAC5-31-180,**

**11VAC5-31-190; repealing 11VAC5-31-110, 11VAC5-31-120).**

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

Effective Date: September 26, 2012.

Agency Contact: Mitch Belton, Contract and Project Coordinator, State Lottery Department, 900 East Main Street, 9th Floor, Richmond, VA 23219, telephone (804) 692-7136, FAX (804) 692-7325, or email mbelton@valottery.com.

#### Summary:

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

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

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

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

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

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

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

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

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

"Vacuum fluorescent display" means a player display unit that, when connected to the lottery terminal, presents messages to the customer, such as customer transaction totals,

validation and cancellation amounts, and jackpot drawing messages.

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

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

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

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

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

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

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

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

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

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

- ~~1. The financial responsibility and security of the applicant and his business or activity;~~
- ~~2. The accessibility of his place of business or activity to the public;~~
- ~~3. The sufficiency of existing lottery retailers to serve the public convenience;~~
- ~~4. The volume of expected lottery ticket sales;~~
- ~~5. The ability to offer a high level of customer service to lottery players;~~

~~6. Whether the place of business caters to or is frequented predominantly by persons under 18 years of age;~~

~~7. Whether the nature of the business constitutes a threat to the health or safety of prospective lottery patrons;~~

~~8. Whether the nature of the business is consonant with the probity of the Commonwealth; and~~

~~9. Whether the applicant or retailer has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery.~~

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

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

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

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

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

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

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

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

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

**B. Special retailer licensing.**

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

- a. Length of license period;
- b. Hours or day of sale;
- c. Selling of only limited products;
- d. Specific persons who are allowed to sell lottery tickets;
- e. Specific sporting, charitable, social, or other special events where lottery tickets may be sold if in conformity with law; or



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f. Different commission and payment structures and bonding requirements.

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

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

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

B. The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded.

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

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

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

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

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

The initial general license fee shall be \$50 and the periodic review fee shall be \$35, or as otherwise determined from time to time by the board, and shall be paid in accordance with the department's licensing procedures. The license fees, where applicable, shall be paid for each location An initial licensing fee up to [ \$100.00 \$100 ] and an annual license fee up to [ \$70.00 \$70 ] shall be collected from each lottery sales agent and shall be paid in accordance with the department's licensing procedures. These fees are nonrefundable, unless otherwise determined by the director in his sole discretion or specified in the department's procedures. The license fees shall be paid for each location.

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

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

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

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

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

Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering tickets; (ii) paying for tickets purchased; (iii) reporting receipts, transactions and disbursements pertaining to lottery ticket sales; and (iv) settling the retailer's account with the department.

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

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

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

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

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

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

D. Tickets shall be sold only at the location listed on each retailer's license from the department. No retailer or his

employee or agent shall purchase a winning lottery game ticket from a player at a discounted price.

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

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

~~G. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. An employee not yet 18 years of age, but who is at least 16 years of age, may sell or otherwise vend lottery tickets at the retailer's place of business so long as the employee is supervised by the manager or supervisor in charge at the location where the tickets are being sold.~~

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

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

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

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

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

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

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

1. The person's place of business caters to or is frequented predominantly by persons under 18 years of age, but excluding family-oriented businesses;
2. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;
3. The nature of the person's business is not consonant with the probity of the Commonwealth;
4. The person has committed any act of fraud, deceit, misrepresentation, moral turpitude, or illegal gambling or engaged in conduct prejudicial to public confidence in the state lottery; ~~or~~

~~5. The person has been suspended permanently from a federal or state licensing or authorization program and that person has exhausted all administrative remedies pursuant to the respective agency's regulations or procedures. The person falsifies or misrepresents a material fact on any application, form, document, or data submitted during the licensure process;~~

~~6. The person has an unsatisfactory prior history, record, or performance with the lottery;~~

~~7. The person's place of business represents a substantial risk for the collection, deposit, preservation, accounting, or safeguarding of Commonwealth of Virginia Trust Funds, irrespective of the bond or surety provided by the person;~~

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

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

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

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

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

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

E. If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may

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temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing, or investigation into alleged violations is concluded.

F. A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final lottery accounting of his lottery activities by the date specified by the director.

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

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

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

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

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

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

### FORMS (11VAC5-31)

~~Retailer License Application, SLD 0062 (rev. 8/97).~~  
~~Retailer Location Form, SLD 0055 (rev. 3/99).~~  
~~Personal Data Form, SLD 0061 (rev. 4/99).~~  
~~On Line Game Survey, SLD 0120.~~  
~~Licensed Retailer Certificate (rev. 9/94).~~  
~~Instant Ticket Game/Contest Product Licensing Application (rev. 7/96).~~  
~~Retailer Contract (rev.12/99).~~

~~Retailer Contract Addendum (rev. 12/00).~~  
~~Authorization Agreement for Preauthorized Payments, SLD-0035A.~~  
~~A/R Online Accounting Transaction Form, X 0105 (eff. 11/00).~~  
~~Retailer Activity Form, SLD 0081 (rev.2/95).~~  
~~On Line Weekly Settlement Envelope, SLD 0127.~~  
~~Cash Tickets Envelope, SLD 0125.~~  
~~Cancelled Tickets Envelope, SLD 0124.~~  
~~Ticket Problem Report, SLD 0017 (eff. 9/92).~~  
~~Weekly Settlement Form, SLD 0128 (eff. 2/89).~~  
[Retailer License Application, SLD-0062 \(rev. 10/07\).](#)  
[Retailer Contract \(rev. 5/10\).](#)

VA.R. Doc. No. R12-3032; Filed August 9, 2012, 10:02 a.m.

## **Final Regulation**

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

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

**Effective Date:** September 26, 2012.

**Agency Contact:** Mitch Belton, Contract and Project Coordinator, State Lottery Department, 900 East Main Street, 9th Floor, Richmond, VA 23219, telephone (804) 692-7136, FAX (804) 692-7325, or email mbelton@valottery.com.

### **Summary:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"On line terminal" or "terminal" means a device that is authorized by the department to function in an on-line, interactive mode with the department's computer system for the purpose of issuing tickets or an electronic facsimile

thereof, and entering, receiving and processing game related transactions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Retailers may sell tickets from new instant games upon receipt of the tickets from the department, but shall not sell

tickets for an instant game after the announced end of that game.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The original ticket must be presented for validation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. At department headquarters;

2. At a department customer service center;

3. From a cashing retailer;

4. By mail; or

5. At any other location specifically authorized by the department.

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

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, money order, other cash equivalent or by any combination of these methods.
2. If a check for payment of a prize by a retailer to a claimant is denied for any reason, the retailer is subject to the same service charge, interest and penalty payments for referring a debt to the department for collection that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.
3. During normal business hours of the lottery retailer ~~when the validations equipment is operational and~~ with operational validation equipment by which the ticket claim can be validated, a lottery retailer shall pay any lottery prize of ~~\$601~~ \$600 or less, unless otherwise determined by the director, regardless of the location from which the winning ticket was purchased.
4. A prize claim shall be paid only at the location specified on the retailer's license or at a lottery office.
5. The department will reimburse a retailer for all valid prizes paid by the retailer within the specified prize redemption period for the game from which the prize resulted.
6. In no case shall a retailer impose a fee, additional charge or discount for cashing a winning lottery game ticket.
7. Retailers who pay claims without validating the tickets do so at their own financial risk.
8. ~~Federal Internal Revenue Code, 26 USC § 6050I requires lottery retailers who receive more than \$10,000 in cash in one transaction or two or more related transactions in the aggregate, from a single player or his agent, to file a return or such information with the Internal Revenue Service (IRS). The IRS encourages retailers to report all suspicious transactions, even if they do not meet the \$10,000 threshold. For purposes of this requirement only, "cash" includes coin and currency only and does not include bank checks or drafts, traveler's checks, wire transfers, or other negotiable or monetary instruments.~~

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

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

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

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

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall present the

original signed ticket to any department office including the department's headquarters or mail the signed ticket to the department's headquarters;

2. If a ticket holder is unable to return to any retailer to claim a prize that the retailer otherwise would pay, the ticket holder may present the original signed ticket at any department office or mail the signed ticket to the department's headquarters; ~~or~~

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

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

B. The department may require a claim form.

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

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

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

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

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

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

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

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

1. File the appropriate income reporting forms with the Virginia Department of Taxation and the federal Internal Revenue Service; and
2. Withhold federal and state taxes from any winning ticket in excess of \$5,001 accordance with the tax regulation in effect at the time.

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

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

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

electronic validation process is considered the owner of the ticket.

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

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

1. The ticket.
2. Validation information.
3. Prize claim form, unless otherwise delayed in accordance with this chapter.
4. The bearer may be required to present proper identification.

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

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

1. If a dispute arises, or it appears that a dispute may arise, relative to any ownership of a winning ticket or any prize;
2. If there is any question regarding the identity of the claimant;
3. If there is any question regarding the validity of any ticket presented for payment;
4. If there is any question whether a claimant has made a valid cash option election; or
5. If the claim is subject to any set off for delinquent debts owed to any agency eligible to participate in the Setoff Debt Collection Act (Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia) if the agency has registered such debt with the Virginia Department of Taxation and timely notice of the debt has been furnished by the Virginia Department of Taxation to the department.

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

C. No liability for interest for any delay of any prize payment in accordance with subsections A and B, or any delay beyond the department's control, shall accrue to the benefit of the claimant pending payment of the claim. The department is neither liable for nor has it any responsibility to resolve disputes between or among competing claimants.

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

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

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

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

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

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

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

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

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



# Regulations

validated through other means. Such information may include, but is not limited to, the following:

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

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

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

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

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

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

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

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

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

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

### FORMS (11VAC5-41)

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

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

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

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

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

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

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

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

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

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

VA.R. Doc. No. R12-3033; Filed August 9, 2012, 10:03 a.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

#### Final Regulation

**REGISTRAR'S NOTICE:** The Board of Funeral Directors and Embalmers is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that

are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Funeral Directors and Embalmers will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-151).

**Statutory Authority:** §§ 54.1-2400 and 54.1-2816.1 of the Code of Virginia.

**Effective Date:** September 26, 2012.

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

**Summary:**

*The amendments change the continuing education requirements for funeral services licensees, funeral directors, and embalmers from 10 hours every two years to five hours per year and allow the subject matter to include federal laws and regulations as well as Virginia law and regulations.*

**18VAC65-20-151. Continued competency requirements for renewal of an active license.**

A. Funeral service licensees, funeral directors or funeral embalmers shall be required to have completed a minimum of ~~10~~ five hours per year of continuing education offered by a board-approved sponsor for licensure renewal ~~in even years~~ in courses that emphasize the ethics, standards of practice, preneed contracts and funding, or federal or state laws and regulations governing the profession of funeral service ~~in Virginia~~. One hour per year shall cover compliance with laws and regulations governing the profession, and at least one hour per year shall cover preneed funeral arrangements.

B. Courses must be directly related to the scope of practice of funeral service. Courses for which the principal purpose is to promote, sell or offer goods, products or services to funeral homes are not acceptable for the purpose of credit toward renewal.

C. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

D. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

VA.R. Doc. No. R12-3343; Filed August 6, 2012, 11:30 a.m.

**TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS**

**STATE CORPORATION COMMISSION**

**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:** 20VAC5-305. Rules for Electricity and Natural Gas Submetering and for Energy Allocation Equipment (amending 20VAC5-305-10, 20VAC5-305-20, 20VAC5-305-50, 20VAC5-305-60, 20VAC5-305-70, 20VAC5-305-90, 20VAC5-305-110; adding 20VAC5-305-95).

**Statutory Authority:** §§ 12.1-13 and 56-245.3 of the Code of Virginia.

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

**Public Comment Deadline:** October 1, 2012.

**Agency Contact:** Brian Beckman, Assistant Utility Analyst, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 225-3267, FAX (804) 371-9350, or email brian.beckman@scc.virginia.gov.

**Summary:**

*Chapter 338 of the 2012 Acts of Assembly directs the State Corporation Commission to promulgate regulations and standards for the installation of submetering equipment or energy allocation equipment at campgrounds for the purpose of fairly allocating the cost of electrical or natural gas consumption for each guest to use such equipment. The proposed amendments include the use of submetering and energy allocation equipment for electricity and natural gas at campgrounds and, among other things, provide general requirements for the use of such equipment at campgrounds and for the billing of campsite tenants for actual measured usage of electricity and natural gas.*

AT RICHMOND, AUGUST 6, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2012-00084

Ex Parte: In the matter concerning rules for electricity and natural gas submetering and for energy allocation equipment at campgrounds



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# Regulations

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## ORDER FOR NOTICE AND COMMENT

This Order initiates a rulemaking required by Chapter 338 of the 2012 Acts of Assembly ("Acts"). Through these Acts, the Virginia General Assembly has directed the State Corporation Commission ("Commission") to promulgate regulations and standards for the installation of submetering equipment or energy allocation equipment at campgrounds for the purpose of fairly allocating the cost of electrical or natural gas consumption for each guest using such equipment.

The Staff of the Commission ("Staff") has conferred informally with representatives of electric and natural gas utilities in the Commonwealth and the Virginia Campground Association. The Staff has prepared proposed rules implementing the regulations required by the Acts ("Proposed Rules"), which are attached hereto.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the public should be afforded an opportunity to file written comments concerning the Proposed Rules and to request a hearing before the Commission on any substantive objection that cannot be presented effectively in writing. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUE-2012-00084.
- (2) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment, including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the Virginia Register.
- (3) A downloadable version of this Order for Notice and Comment and the Proposed Rules shall be available for access by the public on the Commission's website: <http://www.scc.virginia.gov/case>. A copy of this Order for Notice and Comment and the Proposed Rules shall be available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday from 8:15 a.m. to 5 p.m., excluding holidays.
- (4) On or before September 10, 2012, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia:

## NOTICE TO THE PUBLIC OF PROPOSED RULES THAT THE STATE CORPORATION COMMISSION IS CONSIDERING FOR ELECTRICITY AND NATURAL GAS SUBMETERING AND FOR ENERGY ALLOCATION EQUIPMENT AT CAMPGROUNDS

CASE NO. PUE-2012-00084

The Virginia General Assembly, through Chapter 338 of the 2012 Acts of Assembly ("Acts"), has directed the State Corporation Commission ("Commission") to promulgate regulations and standards for the installation of submetering equipment or energy allocation equipment at campgrounds for the purpose of fairly allocating the costs of electrical or natural gas consumption for each guest using such equipment at the campgrounds. The Commission Staff has prepared proposed rules implementing the regulations required by the Acts ("Proposed Rules").

The Commission has issued an Order for Notice and Comment providing, among other things, that notice be given to the public and that interested persons be given an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules.

Copies of the Commission's Order for Notice and Comment and the Proposed Rules are available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday from 8:15 a.m. to 5 p.m., excluding holidays. Interested persons also may download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before October 1, 2012, any interested person may file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing such comments, proposals, or hearing requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any interested person desiring to submit comments electronically may do so by following the instructions on the Commission's website: <http://www.scc.virginia.gov/case>. All correspondence shall refer to Case No. PUE-2012-00084.

### STATE CORPORATION COMMISSION

- (5) On or before October 1, 2012, any interested person or entity may comment on, propose modifications or supplements to, or request a hearing on, the Proposed Rules by filing such comments, proposals, or hearing requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Interested persons desiring to submit comments electronically may do so by following the instructions on

the Commission's website: <http://www.scc.virginia.gov/case>. Requests for hearing must include: (i) a precise statement of the filing party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter. All correspondence shall refer to Case No. PUE-2012-00084.

(6) The Staff may file a Report with the Clerk of the Commission on or before October 15, 2012, concerning comments submitted to the Commission addressing the Proposed Rules.

(7) This matter is continued pending further order of the Commission.

AN ATTESTED COPY hereof shall be delivered by the Clerk of the Commission to the Commission's Office of General Counsel and Divisions of Energy Regulation and Information Resources.

**20VAC5-305-10. Definitions.**

Certain words as used in this chapter shall be understood to have the following meaning:

"Apartment house" means a building or buildings with the primary purpose of residential occupancy containing more than two dwelling units all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house includes residential condominiums and cooperatives whether rented or owner-occupied.

"Building" means all of the individual units served through the same utility-owned meter within an apartment house, office building, or shopping center as defined in this section.

"Campground" means and includes but is not limited to a travel trailer camp, recreation camp, family campground, camping resort, camping community, or any other area, place, parcel, or tract of land, by whatever name called, on which three or more campsites are occupied or intended for occupancy, or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites and facilities is granted gratuitously, or by rental fee, lease, or conditional sale, or by covenants, restrictions, and easements. "Campground" does not include a summer camp, migrant labor camp, or park for mobile homes as defined in §§ 32.1-203 and 35.1-1 of the Code of Virginia, or a construction camp, storage area for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions, and conditions from providing sanitary facilities within the individual owner's property lines.

"Campsite" means and includes any plot of ground within a campground used or intended for occupation by the camping unit.

"Commission" means the State Corporation Commission of Virginia.

"Dwelling" means a room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

"Energy allocation equipment" means any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any dwelling unit ~~or~~, nonresidential rental unit, or campsite within an apartment house, office building, ~~or~~ shopping center, or campground.

"Energy unit" means the billing units for energy delivered to the master-metered customer. For electricity, the units are generally kilowatt hours (Kwh). For natural gas, the units are generally therms, but may be dekatherms (Dth), cubic feet (cf), hundreds of cubic feet (Ccf), or thousands of cubic feet (Mcf).

"Master meter" means a meter used to measure for billing purposes, all electric or natural gas usage of an apartment house, office building, ~~or~~ shopping center, or campground, including common areas, common facilities, and dwelling or rental units therein.

"Month" or "monthly" means the period between two consecutive meter readings, either actual or estimated, at approximately ~~thirty (30) days of~~ 30 day intervals.

"Nonresidential rental unit" means a room or rooms in which retail or commercial services, clerical work, or professional duties are carried out.

"Office building" means a building or buildings containing more than two rental units which are rented primarily for retail, commercial, or professional use, with rental paid at intervals of one month or longer.

"Owner" means any owner, operator, or manager of an apartment house, office building, ~~or~~ shopping center, or campground engaged in electrical or natural gas submetering or the use of energy allocation equipment.

"Owner-paid areas" means those areas for which the owner bears financial responsibility for energy costs which include but are not limited to areas outside individual residential or nonresidential units or in owner-occupied or - shared areas such as maintenance shops, vacant units, meeting units, meeting rooms, offices, swimming pools, laundry rooms, or model apartments.

"Shopping center" means a building or buildings containing more than two stores which are rented primarily for commercial, retail, or professional use.

"Submeter" means electric energy or natural gas measurement device used in submetering.

"Submetering" means dwelling or rental unit electrical or natural gas direct remetering performed by the owner to measure the tenant's electrical or natural gas usage and to render a bill for such usage.

"Submetering equipment" means equipment used to measure actual electricity or natural gas usage in any dwelling unit ~~or~~, nonresidential rental unit, or campsite when such equipment is not owned or controlled by the electric or natural gas utility

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serving the apartment house, office building, ~~or~~ shopping center, or campground in which the dwelling unit ~~or~~ nonresidential rental unit, or campsite is located.

"Tenant" means the occupant or occupants of a submetered dwelling ~~or~~ rental unit, or campsite.

"Utility" means the supplier of electric service or natural gas service to a master meter.

## **20VAC5-305-20. General requirements.**

Submetering or energy allocation equipment may not be used in any dwelling unit unless all dwelling units in the apartment house utilize such equipment to the extent permitted by the physical facilities.

Any individual nonresidential rental unit ~~or~~ store, or campground may utilize submetering or energy allocation equipment, provided the rental agreement or lease between the owner and the tenant clearly states that the nonresidential rental unit ~~or~~ store, or campsite is or will be using submetering or energy allocation equipment.

All rental agreements and leases between the owner and the tenants shall clearly state that the dwelling unit ~~or non-residential, nonresidential~~ rental unit, or campsite utilizes submetering or energy allocation equipment, that the basis of bills for electric or natural gas consumption will be rendered based on readings of such equipment, and that any disputes relating to the amount of the tenant's bill and the accuracy of the equipment will be between the tenant and the owner. ~~The~~ Where applicable, the provisions of the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq. of the Code of Virginia) will govern the landlord-tenant relationship concerning the use of submetering or energy allocation equipment on all related issues other than those covered by these rules.

Each owner shall be responsible for providing, installing, sealing (if necessary), and maintaining all submetering or energy allocation equipment necessary for the measurement or allocation of the costs for electrical energy or natural gas consumed by tenants.

Any electric submeter installed will be of a type and class to register properly the electrical consumption of the dwelling unit ~~or~~ nonresidential rental unit, or campsite, and such meter will meet the standards of ~~the latest edition of~~ the American National Standards Institute, Inc., Standard ~~C12~~ C12.1-2008 Code for Electricity Metering (ANSI ~~C12~~ C12.1).

Any natural gas submeter installed will be of a type and class to register properly the natural gas consumption of the dwelling ~~or~~ nonresidential rental unit, or campsite, and such meter will meet the standards of ~~the latest edition of~~ the American National Standard Institute Standards ANSI/ASC B109.1 (2000) and B109.2 (2000) for Diaphragm Type Gas Displacement Meters and ANSI/ASC B109.3 (2000) for Rotary Type Gas Displacement Meters (hereafter, ANSI ~~B 409~~ B109).

Any energy allocation equipment installed will be of a type and class appropriate to the heating, ventilation, and air conditioning (HVAC) system of the apartment house, office building, ~~or~~ shopping center, or campground and used in accordance with the manufacturer's installation specifications and procedures for such energy allocation equipment.

Any owner installing submetering or energy allocation equipment shall notify the ~~Commission~~ commission and the utility providing electric or natural gas service to the apartment house, office building, ~~or~~ shopping center, or campground in writing within 90 days of completion of such installation that the equipment has been installed and shall give the name of the apartment house, office building, ~~or~~ shopping center, or campground; number of dwelling units ~~or~~ nonresidential rental units, or campsites in the project; location; mailing address of the owner; the approximate date of installation of the equipment; and the ~~type(s)~~ type, ~~manufacturer(s)~~ manufacturer, and model ~~number(s)~~ number of such equipment.

No building or buildings which qualify as an apartment house, office building, or shopping center shall be excluded from ~~these rules~~ this chapter because the apartment house, office building, or shopping center contains a mixture of dwelling units and nonresidential rental units.

## **20VAC5-305-50. Energy allocation.**

Energy allocation equipment may be used solely to allocate the cost of electric or natural gas service among tenants using the apartment house, office building, ~~or~~ shopping center, or campground.

Energy allocation systems should provide a reasonable determination of energy use and resulting costs for each dwelling unit ~~or~~ nonresidential rental unit, or campsite. The energy allocation system should be appropriate for the HVAC system application. Components should be properly installed to assure correct measurements of allocation parameters. There should be proper calculation procedures in converting from measurement to allocation.

Energy allocation equipment in service may be tested by the owner, the ~~Commission~~ commission, or any other lawfully constituted authority having jurisdiction. Testable components of the energy allocation system should be accurate, consistent with manufacturer's specifications. The ~~Commission~~ commission may, by order, require that energy allocation equipment meet other independent, authoritative technical standards or operational guidelines, such as standards developed under the auspices of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE).

## **20VAC5-305-60. Testing capability and metering equipment.**

Each owner shall engage a qualified expert or factory representative to perform the equipment tests required by these terms and conditions; such tests being performed with

instruments, portable standards, reference manuals, and other equipment and facilities all of which shall comply with standards of ANSI ~~C12~~ C12.1 or ANSI B109 for submetering equipment, and with manufacturer's recommended practices for energy allocation equipment. All such practices shall be available at all reasonable times for inspection by the ~~Commission's~~ commission's representatives.

**20VAC5-305-70. Periodic tests and checks.**

Each owner shall have a testing program the primary purpose of which is to maintain an acceptable degree of accuracy during the service life of the equipment. All submetering equipment shall be tested in accordance with the provisions of ~~the latest edition of~~ ANSI ~~C12~~ C12.1 or ANSI B109. All energy allocation equipment shall be tested in accordance with manufacturer's suggested testing procedures and practices for such equipment.

No submeter shall be placed in service until its percentage registration has been established. This may be accomplished either through the engagement of a qualified expert or by a certificate provided by the manufacturer. All submeters shall be adjusted as close as possible to the condition of 100% registration. No electric submeter that exceeds the test calibration limits for watt-hour meters as set forth by ~~the latest edition of~~ ANSI ~~C12~~ C12.1 shall be placed in service or left in service. No natural gas submeter that exceeds the test calibration limits for meters as set forth by ~~the latest edition of~~ ANSI B109 shall be placed in service or left in service.

Whenever a submeter is found to exceed these limits, it shall be adjusted.

Energy allocation equipment shall be adjusted to the manufacturer's specifications before being placed in service.

If any submetering or energy allocation equipment is removed from service or replaced by other equipment for any purpose whatsoever, it shall be properly tested and adjusted before being placed in service again.

The owner shall keep and maintain the following records:

1. A record of all submetering or energy allocation equipment, showing the equipment number and location (the tenant's address where installed or if in reserve) in the apartment house, office building, ~~or~~ shopping center, or campground.
2. The record of each test made shall show the identifying number of the equipment, the standard number and other necessary devices used, the date and kind of test made, by whom, the percentage registration at each load tested for submetering equipment, the accuracy level of the parameter measured by the energy allocation equipment, and sufficient data to permit verification of the calculations.
3. A record of all the portable standards and reference standards used to test equipment. Test equipment shall at all times be accompanied by a certified calibration card signed by the proper authority, giving the date when it was

last certified and adjusted. Records of certifications and calibrations of all standards shall be kept on file in the office of the owner.

The aforementioned records for each dwelling ~~or~~, nonresidential rental unit, or campsite shall be made available, upon request, to the tenant of that unit during reasonable business hours at the resident manager's office or, if there is no resident manager, at the dwelling ~~or~~, nonresidential rental unit, or campsite of the tenant at the convenience of the owner and tenant. The owner of the building or campground may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

All records shall be made available to the ~~Commission~~ commission upon request.

**20VAC5-305-90. Billing for apartment houses, office buildings, and shopping centers.**

Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for more or less than that period. Bills shall be calculated and rendered as promptly as possible following receipt by the owner of the bill from the utility, but no later than 15 days after receipt of the utility's bill. The submetering or energy allocation equipment shall be read within three business days of the scheduled reading date of the utility's master meter.

For submetering, the unit of measurement shall be the energy unit as defined in 20VAC5-305-10. For energy allocation equipment, the units of measurement shall be those characteristics monitored by the allocation equipment.

The energy billed to any tenant shall be only the energy consumed within that dwelling or nonresidential rental unit and so measured or monitored by the equipment. The cost of energy used in owner-paid areas may only be recovered by the owner as provided in the last paragraph of this section, and may not be billed to any tenant as part of the billings rendered pursuant to this chapter and may not be measured through the dwelling or nonresidential rental unit submetering or energy allocation equipment. Where tenant lease agreements have made such provision, energy costs for usage consumed within the dwelling unit or nonresidential rental unit, that are not allocated by energy allocation equipment, may be allocated by the owner among the various tenants in the same proportions as the leased space square footage. These costs shall be listed separately from energy billings based on energy allocation equipment, and appropriately marked on the monthly tenant bills.

The owner shall render bills to the tenant in the same energy ~~unit(s)~~ unit or units as billed the owner by the utility.

The tenant's bills shall be calculated in the following manner:

After receipt of the electric or natural gas bill from the utility, by the owner, said owner shall divide the "total current

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# Regulations

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charges" by the total number of energy units billed by the utility to determine the average cost in cents per energy unit. The average energy unit cost shall be multiplied by each tenant's energy unit consumption to obtain the tenant's monthly charges.

For the purposes of computing the average cost per energy unit, the "total current charges" shall include/exclude the following, as applicable:

Include:

1. Customer, demand, commodity, and energy charges.
2. Fuel adjustment charge.
3. Purchased gas adjustment.
4. Local taxes.
5. Surcharges, i.e. interim rate relief, unrecovered deferred fuel, temporary energy surcharge.
6. Facilities charge.

Exclude:

- a. Miscellaneous charges, e.g. charges by the utility for late payments.
- b. Outdoor and security lighting charges.
- c. Merchandise charges.

The owner may impose a service charge in accordance with § 56-245.3 of the Code of Virginia per dwelling or ~~non-residential~~ **nonresidential** rental unit per month to offset the administrative cost of billing.

The tenant's bill shall show all of the following information:

1. The dates and readings of the submetering or energy allocation equipment at the beginning and at the end of the period for which the bill is rendered and the billing date.
2. The number of energy units consumed during the current billing period.
3. The average cost in cents per energy unit used in computing the bill.
4. The amount due for electricity or natural gas consumed, within the dwelling unit or nonresidential rental unit, the administrative service charge, if any, the balance forward, and the total amount due.
5. The name or address, or both, of the tenant to whom the bill is applicable.
6. The name of the firm rendering the tenant's bill and the name or title, address, and telephone number of the ~~person(s)~~ **person or persons** where payment can be made and, also, who to contact in the case of any questions or disputes concerning the bill.
7. A precise statement that the bill is not from the utility providing service to the apartment house, office building, or shopping center.

Bills will be mailed or delivered to the tenant's premises within three business days after the billing date.

Estimated bills shall not be rendered unless the meter or energy allocation equipment has been tampered with, is out of order, or access cannot be attained, and in such case, the bill shall be distinctly marked "~~estimated~~". "estimated." Such estimates shall be based upon one of the following:

- ~~A. 1.~~ On consumption or a similar billing period where the information of previous consumption is available; or
- ~~B. 2.~~ In the event that a tenant has not lived on the premises for one year and, therefore, consumption for a similar billing period is not available, the preceding billing period shall be used; or
- ~~C. 3.~~ If available, the average of the preceding two billing periods shall be used as a basis for estimates.

Adjustment to the tenant's bills shall be made under any of the following conditions:

- ~~(1) a.~~ Any billing errors due to incorrect readings or improper billing calculations discovered by the owner on his own initiative or discovered as a result of an investigation because of a question or a dispute by a tenant;:
- ~~(2) b.~~ It is determined that a cross-metering situation exists. The tenants involved will be rendered corrected bills to cover such period of time as the statute of limitations allows. If a tenant has been underbilled, he shall be allowed to make payment of the amount underbilled in equal monthly installments for as many months as the corrected bill covers, but for not more than 10 months, the entire amount underbilled being due upon termination of tenancy. If a tenant has been overbilled and is due a credit, if he wishes a cash refund, it shall be made, otherwise such credit shall be posted to the tenant's account;:
- ~~(3) c.~~ The utility adjusts the owner's bill; or
- ~~(4) Or as~~ **d. As** detailed in 20VAC5-305-40 (Submetering).

Nothing contained in ~~these rules~~ this chapter shall prohibit the owner from recovery in periodic lease payments the tenant's fair share of electricity or natural gas cost attributable to owner-paid areas and costs incurred in establishing and maintaining the submetering system or energy allocation equipment.

## **20VAC5-305-95. Billing for campgrounds.**

Bills charged to a tenant shall be based upon the tenant's actual measured usage. For submetering, the unit of measurement shall be the energy unit as defined in 20VAC5-305-10. For energy allocation equipment, the units of measurement shall be those characteristics monitored by the allocation equipment.

The owner shall render bills to the tenant in the same energy unit or units as billed the owner by the utility.

The tenant's bills shall be calculated in the following manner: utilizing the most recent electric or natural gas bill from the utility to the owner, said owner shall divide the "total current charges" by the total number of energy units

billed by the utility to determine the average cost in cents per energy unit. The average energy unit cost shall be multiplied by each tenant's energy unit consumption to obtain the tenant's charges.

For the purposes of computing the average cost per energy unit, the "total current charges" shall include or exclude the following, as applicable:

Include:

1. Customer, demand, commodity, and energy charges.
2. Fuel adjustment charge.
3. Purchased gas adjustment.
4. Local taxes.
5. Surcharges (i.e., interim rate relief, unrecovered deferred fuel, temporary energy surcharge).
6. Facilities charge.

Exclude:

- a. Miscellaneous charges (e.g., charges by the utility for late payments).
- b. Outdoor and security lighting charges.
- c. Merchandise charges.

The owner may impose a service charge in accordance with § 56-245.3 of the Code of Virginia.

The owner shall recalculate the average cost per energy unit each month based upon the most recent master meter bill received from the utility for the campground. The owner shall implement the new average cost per energy unit within five calendar days of the date the master meter bill is issued to the owner by the utility.

For service at campgrounds where an owner and a tenant have an agreement that clearly states that the campground is or will be using submetering or energy allocation equipment, meter readings for the assigned campsite shall be taken at the time a tenant registers to stay at the campground, and the owner shall provide each tenant a written statement when the tenant registers, stating:

1. That the energy used at the tenant's assigned campsite will be billed to the tenant;
2. A description of how the energy unit cost will be calculated; and
3. The initial meter reading for the assigned campsite.

Meter readings for the assigned campsite shall also be taken at the time of the tenant's checkout. The tenant may be billed at checkout for the tenant's actual electric or natural gas usage at the assigned campsite based upon the tenant's report of the meter reading or upon the owner's reading of the meter for the assigned campsite.

The tenant's bill shall be provided to the tenant at checkout. A tenant's bill shall contain the following:

1. The initial energy reading and date for the current billing period;

2. The final energy reading and date for the current billing period;

3. The applicable rate;

4. The amount due; and

5. A statement that payment is due immediately or the date on which payment is due.

On request of a tenant who has been or will be billed for energy usage, the owner shall show the tenant the master meter bill received from the utility for the campground that corresponds to the rates that the tenant has been or will be charged for the assigned campsite.

Estimated bills shall not be rendered unless the meter or energy allocation equipment has been tampered with, and in such case, the bill shall be distinctly marked "estimated." Such estimates shall be based upon previous consumption at the campsite during a similar billing period.

**20VAC5-305-110. Initial and final bills.**

1. Initial and final bills shall be rendered for the number of energy units actually consumed in the initial and final billing periods.

2. On the date possession is taken by a tenant of a dwelling or nonresidential rental unit, an initial reading will be taken from the submetering or energy allocation equipment serving such dwelling or nonresidential rental unit to commence service to that tenant. The initial reading will be subtracted from the next reading of the equipment taken on the regularly scheduled monthly reading dates on which other submetering or energy allocation equipment in the building is read, to determine the consumption during the initial billing period. The energy units consumed as determined in the above manner will be multiplied times the average energy unit cost which is determined for the computation of bills for all other tenants for the period ending with the regularly scheduled reading date of that month.

3. On the date a tenant gives up possession of a dwelling or nonresidential rental unit, a final reading will be taken from the submeter equipment serving such unit to terminate service to the tenant. The reading of the equipment taken on the last previous regularly scheduled monthly reading dates on which other submetering or energy allocation equipment in the building was last read will be subtracted from the final reading to determine the consumption during the final billing period. The energy units consumed or determined in the above manner will be multiplied times the average energy unit cost which is determined for the computation of bills for all other tenants for the regularly scheduled monthly reading date after the final reading. If the owner and tenant so agree in writing, the owner may use the average energy unit cost from the previous month when determining the amount due for the last month of tenancy.

The provisions in this section shall only be applicable to apartment houses, office buildings, and shopping centers.



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# Regulations

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Bills for campgrounds shall be rendered as set forth in 20VAC5-305-95.

DOCUMENTS INCORPORATED BY REFERENCE (20VAC5-305)

ANSI C12.1-2008, American National Standard for Electric Meters Code for Electricity Metering, National Electrical Manufacturers Association, 1300 N. 17th Street, Suite 1752, Rosslyn, VA 22209 (<http://www.nema.org>).

ANSI B109.1, Diaphragm-Type Gas Displacement Meters (Under 500 Cubic Feet per Hour Capacity), June 2000, American Gas Association, 1400 N. Capitol Street, NW, Washington, DC 20001, telephone 1-800-699-9277 (<http://www.aga.org>).

ANSI B109.2, Diaphragm-Type Gas Displacement Meters (500 Cubic Feet per Hour Capacity and Over), June 2000, American Gas Association, 1400 N. Capitol Street, NW, Washington, DC 20001, telephone 1-800-699-9277 (<http://www.aga.org>).

ANSI B109.3, Rotary Type Gas Displacement Meters, June 2000, American Gas Association, 1400 N. Capitol Street, NW, Washington, DC 20001, telephone 1-800-699-9277 (<http://www.aga.org>).

VA.R. Doc. No. R12-3224; Filed August 7, 2012, 12:37 p.m.

## Summary:

*Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Department for the Aging and transferred its regulations to the newly created Department for Aging and Rehabilitative Services (DARS). DARS assumed the powers of the former Department of Rehabilitative Services and the Department for the Aging on July 1, 2012. These Public Participation Guidelines (PPGs) are identical to the PPGs (22VAC30-11) of the former Department of Rehabilitative Services, which were adopted and are currently in effect for DARS. The former Department for the Aging PPGs are duplicative and unnecessary and, therefore, are repealed.*

VA.R. Doc. No. R12-3360; Filed August 1, 2012, 4:05 p.m.

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## TITLE 22. SOCIAL SERVICES

### DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

#### Final Regulation

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

**Title of Regulation:** **22VAC5-11. Public Participation Guidelines (repealing 22VAC5-11-10 through 22VAC5-11-110).**

**Statutory Authority:** § 51.5-131 of the Code of Virginia.

**Effective Date:** September 26, 2012.

**Agency Contact:** Vanessa S. Rakestraw, Ph.D, CRC, Policy Analyst, Department of Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA, 23229, telephone 804-662-7612, FAX 804-662-7663, toll-free 800-552-5019, or email [vanessa.rakestraw@drs.virginia.gov](mailto:vanessa.rakestraw@drs.virginia.gov).

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# GENERAL NOTICES/ERRATA

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## STATE AIR POLLUTION CONTROL BOARD

### Proposed State Implementation Plan Revision - Transportation Conformity

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a 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. The Commonwealth intends to submit the regulation to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is Transportation Conformity (9VAC5-151, Rev. C12).

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

Public comment period: August 27, 2012, to September 27, 2012.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. 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.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Administrative Process Act because they are necessary to conform to Virginia statutory law. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: EPA promulgated various administrative amendments to the federal transportation regulation on March 14, 2012 (77 FR 14979). Under 40 CFR 51.390, Virginia is required to submit a SIP revision to EPA that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA at 40 CFR Part 93. In order to implement the federal transportation conformity requirements, the Virginia regulation must reflect the recent revisions made to the

federal regulations. To this end, 9VAC5-151 was amended to include the most recent federal revisions.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, 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 materials received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website at <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) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070;
- 2) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020;
- 3) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800; and
- 4) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, TDD (804) 698-4021, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

## STATE CORPORATION COMMISSION

### Bureau of Insurance

AT RICHMOND, JULY 26, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2012-00014

Ex Parte: In the matter of adoption of adjusted prima facie rates for credit life and credit accident and sickness insurance

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## General Notices/Errata

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pursuant to §§ 38.2-3725, 38.2-3726,  
38.2-3727 and 38.2-3730 of the Code of Virginia

**ORDER ADOPTING ADJUSTED PRIMA FACIE RATES  
FOR THE TRIENNIUM COMMENCING JANUARY 1,  
2013**

Pursuant to an Order Scheduling Hearing entered May 30, 2012, after notice to all insurers licensed by the Bureau of Insurance ("Bureau") to transact the business of credit life insurance and credit accident and sickness insurance in the Commonwealth of Virginia, the State Corporation Commission ("Commission") conducted a hearing on July 12, 2012, for the purpose of determining the actual loss ratio for credit life insurance and credit accident and sickness insurance and adjusting the prima facie rates in accordance with §§ 38.2-3726 and 38.2-3727 of the Code of Virginia by applying the ratio of the actual loss ratio to the loss ratio standard set forth in § 38.2-3725 of the Code of Virginia to the prima facie rates. These rates are to be effective for the triennium commencing January 1, 2013.

Represented by its counsel, the Bureau, by its witness, appeared before the Commission in support of the proposed adjusted prima facie rates. No notices of participation were filed, no written comments were received, and no public witnesses appeared before the Commission.

NOW THE COMMISSION, having considered the record, the recommendation of the Bureau and the law applicable to these issues, is of the opinion and finds and ORDERS:

- (1) The adjusted prima facie rates for credit life insurance and credit accident and sickness insurance, as proposed by the Bureau, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED pursuant to the provisions of Chapter 37.1 of Title 38.2 of the Code of Virginia and shall be effective for the triennium commencing January 1, 2013.
- (2) This case is dismissed, and the papers filed herein shall be passed to the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Althelia P. Battle, Deputy Commissioner, Bureau of Insurance, State Corporation Commission who: (i) shall cause a copy hereof together with attachments, as and for the notice to insurers required by § 38.2-3725 of the Code of Virginia, to be sent forthwith to every insurance company licensed by the Bureau of Insurance to transact the business of credit life and credit accident and sickness insurance in the Commonwealth of Virginia; and (ii) shall file in the record of this proceeding an affidavit evidencing notice compliance with this Order.

The Commission's Division of Information Resources shall make available this Order and the attached adjusted rates on the Commission's website:  
<http://www.scc.virginia.gov/caseinfo.htm>.

**ATTACHMENT  
Case No. INS-2012-00014  
ADJUSTED PRIMA FACIE  
CREDIT LIFE  
AND  
CREDIT ACCIDENT AND SICKNESS  
INSURANCE RATES  
EFFECTIVE JANUARY 1, 2013  
THROUGH DECEMBER 31, 2015**

**2013 – 2015 TRIENNIAL CREDIT LIFE INSURANCE  
RATES**

\$0.5965 per month per \$1,000.00 of outstanding insured indebtedness if premiums are payable on a monthly outstanding balance basis.

\$0.3808 per \$100.00 of initial indebtedness repayable in twelve equal monthly installments.

**DEPARTMENT OF ENVIRONMENTAL QUALITY AND  
THE DEPARTMENT OF CONSERVATION AND  
RECREATION**

**Total Maximum Daily Load for South Fork Reed  
Creek, Mill Creek, Stony Fork, Tate Run, Reed  
Creek, Miller Creek, and Cove Creek**

Announcement of a public meeting to present a draft total maximum daily load (TMDL) implementation plan for the following tributaries of the New River: South Fork Reed Creek, Mill Creek, Stony Fork, Tate Run, Reed Creek, Miller Creek, and Cove Creek in Wythe County, Virginia.

Public meeting location: Wythe County Community Hospital, 600 West Ridge Road, Wythe Bland Conference Room, Wytheville, VA, on September 4, 2012, from 6 p.m. to 8 p.m.

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

Meeting description: Final public meeting on an implementation plan to restore water quality.

Description of plan: This plan follows a total maximum daily load (TMDL) study developed for the South Fork Reed Creek, Mill Creek, Stony Fork, Tate Run, Reed Creek, Miller Creek, and Cove Creek that identified bacteria contamination as the cause for the streams failure to meet the Recreational Use water quality standard.

The plan outlines the corrective actions needed to reduce the sources of bacteria and their associated costs and benefits,

along with measurable goals, and an implementation timeline. The plan focuses on addressing the agricultural, residential, and urban sources of bacteria identified in the TMDL study.

How a decision is made: The development of a TMDL and a TMDL implementation plan includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the implementation plan to the State Water Control Board for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, September 4, 2012, to October 4, 2012. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available for the impaired waters from the contacts below or on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs.aspx>.

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

**STATE BOARD OF HEALTH AND THE DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**Proposed Notice of No Need for Certificate of Public Need Applications for Development of Additional Nursing home Beds**

**Legal Notice of Request for Certificate of Public Need Applications.**

Pursuant to the requirements of § 32.1-102.3:2 of the Code of Virginia of 1950, as amended, notice is hereby given of consideration of the need to issue a Request for Applications

("RFA") for the development of additional nursing home beds in Virginia. This notice reviews the qualification of Virginia's twenty-two health planning districts for the authorization of additional nursing home beds pursuant to applicable law and regulation (12VAC5-230).

**Evaluation of Need for Additional Nursing Home Beds.**

The "Nursing Home Services" component of the Virginia State Medical Facilities Plan ("SMFP") (12VAC5-230) contains a nursing home bed-need forecasting method (12VAC5-230-610). This method has been employed by the Virginia Department of Health to compute a forecast of needed nursing home beds in 2015 in each of Virginia's twenty-two health planning districts.<sup>1</sup>

Consistent with the SMFP (12VAC5-230-610 A), no planning district is considered to have a need for additional nursing home beds unless the average annual occupancy of all existing non-federal, Medicaid-certified nursing home beds in the planning district was at least 93% for the most recent year for which bed utilization has been reported to the Virginia Department of Health (through nursing home filings with Virginia Health Information, Inc.).<sup>2</sup> For purposes of this document, 2010 is the most recent year of nursing home utilization data reported to Virginia Health Information.

Also, no planning district will be considered to have a need for additional nursing home beds if there are uncompleted nursing home beds that were authorized for the planning district within the last three years and that will be Medicaid-certified beds. The following table displays, by planning district, the nursing home gross bed need forecast for 2015, the current licensed bed inventory and authorized additions of nursing home beds, and the net bed need forecast for 2015.

The table also shows the average annual percent occupancy of Medicaid-certified nursing home beds for each planning district for the 2010 reporting year and identifies the status of each planning district with respect to authorized but uncompleted nursing home beds. The final column of the table states whether the planning district qualifies for additional nursing home beds for the 2015 planning year.

**Nursing Home Bed Need Forecast and Whether a Planning District Qualifies for Additional Nursing Home Beds for the 2015 Planning Year**

Planning District	Bed Need Forecast For 2015	Existing and Authorized Beds	Projected Net Bed Need In 2015	Average Occupancy of Medicaid Beds 2010	Authorized but Uncompleted Medicaid Beds	Plan. District Qualifies for Additional NH Beds
1	521	641	(120)	84.6%	no	no--no need
2	442	547	(105)	74.6%	no	no--no need
3	1,400	1,525	(125)	84.3%	no	no--no need

## General Notices/Errata

4	853	788	65	88.4%	no	no--low occu.
5	2,073	2,301	(228)	90.3%	no	no--no need
6	1,816	1,528	288	90.4%	no	no--low occu.
7	1,008	972	36	89.8%	no	no--low occu.
8	5,417	4,358	1,059	89.2%	no	no--low occu.
9	863	826	37	88.3%	yes	no--low occu.
10	1,125	1,067	58	92.3%	yes	no--low occu.
11	1,548	1,550	(48)	90.8%	no	no--no need
12	2,085	1,929	156	89.0%	no	no--low occu.
13	958	881	77	90.8%	no	no--low occu.
14	652	670	(18)	93.1%	no	no--no need
15	4,109	4,059	50	91.6%	no	no--low occu.
16	900	785	115	88.1%	no	no--low occu.
17	337	308	29	91.3%	no	no--low occu.
18	613	540	73	91.4%	no	no--low occu.
19	1,140	1,055	85	88.4%	no	no--low occu.
20	4,741	4,393	348	89.0%	no	no--low occu.
21	2,171	1,867	304	89.2%	no	no--low occu.
22	384	376	8	92.1%	no	no--low occu.

Sources: Virginia State Medical Facilities Plan (12 VAC 5-230)

Virginia Employment Commission (population projections, 2007 edition)

2006 Virginia Nursing Home Patient Survey, Health Systems Agency of Northern Virginia (for age-specific nursing home use rates)

Office of Licensure and Certification, VDH (for bed inventory).

### Conclusion.

The Request for Applications for nursing home beds issued in 2012 is hereby issued as a notice that no need exists for new nursing home beds. As shown in the preceding table, no planning district is identified by the standards of the SMFP as having forecasted need for nursing home beds by 2015. No planning district in the Commonwealth currently meets the three-part test for qualification by:

- 1) Having a positive formula-generated need projection;
- 2) Having an average annual occupancy percentage of Medicaid-certified beds for the most recent reporting year of 93% or higher; and
- 3) Having no uncompleted nursing home beds authorized within the last three years that will be Medicaid-certified.

Any person objecting to this notice may notify the State Health Commissioner and the State Board of Health within 14 days of publication of this notice in the Virginia Register. Any objections received will be considered and replied to before a final notice is published.

<sup>1</sup> For conduct of the certificate of public need program, the Virginia Department of Health continues to recognize the former Planning District 20, Southeastern Virginia, and the former Planning District 21, Peninsula, rather than the new combined Planning District 23, Hampton Roads.

<sup>2</sup> The Veterans Care Centers are excluded by regulation from consideration in the determination of nursing home bed need.

**STATE LOTTERY DEPARTMENT**

**Director's Order**

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on July 30, 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 Seventy-Three (12)

Virginia's Instant Game Lottery 1342; "Ca\$h in Hand" Final Rules for Game Operation (effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Seventy-Four (12)

"Seibert's Gas Card Give Away Promotion" Virginia Lottery Retailer Incentive Program Rules (effective on the date of its signing and shall remain in full force and effect until 90 days after the conclusion of the Incentive Program, unless otherwise extended by the Director)

**STATE WATER CONTROL BOARD**

**Proposed Consent Special Order for New Kent County**

An enforcement action has been proposed for New Kent County for alleged violations at the Parham Landing Wastewater Treatment Plant at 7800 Parham Landing Road, New Kent County, VA. The State Water Control Board proposes to issue a consent special order to New Kent County to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Frank Lupini will accept comments by email at [frank.lupini@deq.virginia.gov](mailto:frank.lupini@deq.virginia.gov), FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from August 27, 2012, to September 26, 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](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their

websites and on the Commonwealth Calendar at <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

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

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

