



VIRGINIA

REGISTER OF REGULATIONS

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TABLE OF CONTENTS

Register Information Page	1
Publication Schedule and Deadlines	2
Petitions for Rulemaking	3
Notices of Intended Regulatory Action	4
Regulations	6
1VAC20-50. Candidate Qualification (Notice of Effective Date)	6
1VAC20-60. Election Administration (Notice of Effective Date)	6
1VAC20-60. Election Administration (Final)	6
1VAC20-70. Absentee Voting (Final)	7
2VAC5-670. Rules and Regulations for Enforcement of the Virginia Pesticide Law (Final)	7
2VAC5-675. Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services (Final)	13
2VAC5-680. Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act (Final)	15
2VAC5-685. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act (Final)	20
2VAC20-11. Public Participation Guidelines (Final)	28
3VAC5-70. Other Provisions (Fast-Track)	29
9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees (Forms)	31
9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (Forms)	32
12VAC5-31. Virginia Emergency Medical Services Regulations (Final)	32
13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (Proposed)	103
18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (Final)	117
18VAC140-20. Regulations Governing the Practice of Social Work (Proposed)	118
22VAC40-41. Neighborhood Assistance Tax Credit Program (Final)	123
22VAC40-185. Standards for Licensed Child Day Centers (Final)	126
Governor	153
General Notices/Errata	154

Virginia Code Commission

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Talver**; **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.

PUBLICATION SCHEDULE AND DEADLINES

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

September 2012 through August 2013

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
29:1	August 22, 2012	September 10, 2012
29:2	September 5, 2012	September 24, 2012
29:3	September 19, 2012	October 8, 2012
29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012 (Tuesday)	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012 (Tuesday)	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013
29:12	January 23, 2013	February 11, 2013
29:13	February 6, 2013	February 25, 2013
29:14	February 20, 2013	March 11, 2013
29:150	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013
29:18	April 17, 2013	May 6, 2013
29:19	May 1, 2013	May 20, 2013
29:20	May 15, 2013	June 3, 2013
29:21	May 29, 2013	June 17, 2013
29:22	June 12, 2013	July 1, 2013
29:23	June 26, 2013	July 15, 2013
29:24	July 10, 2013	July 29, 2013
29:25	July 24, 2013	August 12, 2013
29:26	August 7, 2013	August 26, 2013

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Initial Agency Notice

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

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

Name of Petitioner: Tabitha McGlaughlin.

Nature of Petitioner's Request: To amend 18VAC60-20-50, Requirements for continuing education, to include Ursus Lifesavers and Aquatics as approved providers or BLS training.

Agency Plan for Disposition of Request: The petition will be published on September 10, 2012, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Townhall at <http://www.townhall.virginia.gov> to receive public comment until October 10, 2012. The request to amend regulations and any comments for or against the petition will be considered by the board at its meeting scheduled for December 7, 2012.

Public Comment Deadline: October 10, 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.

VA.R. Doc. No. R13-01, Filed August 10, 2012, 2:03 p.m.

BOARD OF MEDICINE

Initial Agency Notice

Title of Regulation: 18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic.

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

Name of Petitioner: David Weitzman, M.D.

Nature of Petitioner's Request: To amend requirements for licensure for persons who have been duly licensed in another state and have practiced a set number of years to gain unrestricted licensure by reciprocity or other such pathways.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Virginia Register of Regulations and will be published on September 10, 2012, and posted on the Virginia Regulatory Townhall at <http://www.townhall.virginia.gov>. Comment on the petition will be received until October 5, 2012. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its meeting on October 25, 2012.

Public Comment Deadline: October 5, 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.

VA.R. Doc. No. R13-02, Filed August 21, 2012, 9:25 a.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Soil and Water Conservation Board intends to consider amending **4VAC50-60, Stormwater Management Regulations**, and promulgating **4VAC50-80, Nutrient Trading Certification Regulations**. The purpose of the proposed action is to establish new Nutrient Trading Certification Regulations (4VAC50-80) in accordance with the 2012 Nutrient Trading Act (§ 10.1-603.15:1. et seq. of the Code of Virginia) that will govern the certification of certain nutrient credits. The action may also require revisions to the Stormwater Management Regulations (4VAC50-60) related to nutrient credit use and additional off-site options for construction activities pursuant to § 10.1-603.8:1 of the Code of Virginia. Pursuant to § 10.1-603.15:2 B 9 of the Code of Virginia, the action may also include but not be limited to language that addresses other components of Article 1.1:1 (§ 10.1-603.15:1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia or Article 1.1 (§ 10.1-104.7 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia (the Stormwater Management Act) as deemed necessary. The action may also include the development of necessary forms and may include documents incorporated by reference.

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

Statutory Authority: §§ 10.1-603.2:1 and 10.1-603.4 of the Code of Virginia.

Public Comment Deadline: October 10, 2012.

Agency Contact: David C. Dowling, Policy and Planning Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

VA.R. Doc. No. R13-3379; Filed August 21, 2012, 2:55 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-151, Virginia Pollutant Discharge Elimination System (VPDES)**

General Permit Regulation for Storm Water Discharges Associated with Industrial Activity. The purpose of the proposed action is to amend and reissue the VPDES general permit for storm water discharges from industrial activity. The permit expires on June 30, 2014, and needs to be reissued so that industrial facilities with point source discharges to surface waters of storm water from regulated industrial activities can continue to have general permit coverage.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the federal Clean Water Act; and 40 CFR Parts 122, 123, and 124.

Public Comment Deadline: October 10, 2012.

Agency Contact: Burton R. Tuxford, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4086, FAX (804) 698-4032, TTY (804) 698-4021, or email burton.tuxford@deq.virginia.gov.

VA.R. Doc. No. R13-3382; Filed August 22, 2012, 6:11 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-190, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining**. The purpose of the proposed action is to amend and reissue the VPDES general permit for wastewater discharges from nonmetallic mineral mines. The permit expires on June 30, 2014, and needs to be reissued so that nonmetallic mineral mines with point source discharges of wastewater to surface waters can continue to have general permit coverage.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the federal Clean Water Act; and 40 CFR Parts 122, 123, and 124.

Public Comment Deadline: October 10, 2012.

Agency Contact: Elleanore M. Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4032, TTY (804) 698-4021, or email elleanore.daub@deq.virginia.gov.

VA.R. Doc. No. R13-3381; Filed August 22, 2012, 6:04 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

Richmond, VA 23219, telephone (804) 726-7648, FAX (804) 726-7132, TTY (800) 828-1120, or email debra.oneill@dss.virginia.gov.

VA.R. Doc. No. R09-2086; Filed August 20, 2009, 9:51 a.m.

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to address a petition for rulemaking requesting amendments to specify a limitation of excessive hours of work without any breaks for pharmacists. The regulation is necessary to prevent, to the extent possible, prescription errors due to fatigue and lack of concentration by pharmacists in the important task of assuring the accuracy and integrity of controlled substances. The action is the result of a petition for rulemaking by a pharmacist and was strongly supported in comment on the petition.

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

Statutory Authority: § 54.1-2400 and Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54 of the Code of Virginia.

Public Comment Deadline: October 10, 2012.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R12-19 (Project 3337); Filed August 8, 2012, 4:36 p.m.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

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 State Board of Social Services has WITHDRAWN the Notice of Intended Regulatory Action to repeal **22VAC15-30, Standards for Licensed Child Day Centers** and promulgate **22VAC15-31, Standards for Licensed Child Day Centers**, which was published in 25:26 VA.R. 4468 August 31, 2009. Enactments 75 through 78 of the 2012 Acts of Assembly abolished the Child Day-Care Council and transferred its powers and duties to the State Board of Social Services effective July 1, 2012. This regulatory action will be promulgated by the State Board of Social Services under a new Notice of Intended Regulatory Action.

Agency Contact: Debra O'Neill, Children's Program Licensing Consultant, Department of Social Services, Division of Licensing Programs, 801 East Main Street,

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Notice of Effective Date

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

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

Effective Date: August 29, 2012.

On March 20, 2012, the Board of Elections amended this regulation relating to material omissions from candidate petitions. The final regulation was published July 16, 2012, Volume 28, Issue 23 of the Virginia Register ([28:23 V.A.R. 1700 July 16, 2012](#)) with an effective date upon filing a notice of the United States Attorney General's preclearance with the Registrar of Regulations. The State Board of Elections hereby notices the United States Attorney General's approval of this regulation via a letter dated August 21, 2012, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of Attorney General of Virginia. The effective date of this regulation is August 29, 2012. Copies are available online at <http://townhall.virginia.gov/L/ViewBoard.cfm?BoardID=151>, by calling toll-free 1-800-552-9745 or local (804) 864-8901, by sending a written request to FOIA Coordinator, 1100 Bank St., Richmond, VA 23219, or by email request to foia@sbe.virginia.gov.

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

VA.R. Doc. No. R12-3156; Filed August 29, 2012, 3:50 p.m.

Notice of Effective Date

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

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

Effective Date: August 29, 2012.

On March 20, 2012, the Board of Elections amended this regulation relating to material omissions from referendum petitions. The final regulation was published July 16, 2012, Volume 28, Issue 23 of the Virginia Register ([28:23 V.A.R. 1701 July 16, 2012](#)) with an effective date upon filing a notice of the United States Attorney General's preclearance with the Registrar of Regulations. The State Board of Elections hereby notices the United States Attorney General's

approval of this regulation via a letter dated August 21, 2012, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of Attorney General of Virginia. The effective date of this regulation is August 29, 2012. Copies are available online at <http://townhall.virginia.gov/L/ViewBoard.cfm?BoardID=151>, by calling toll-free 1-800-552-9745 or local (804) 864-8901, by sending a written request to FOIA Coordinator, 1100 Bank St., Richmond, VA 23219, or by email request to foia@sbe.virginia.gov.

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

VA.R. Doc. No. R12-3155; Filed August 29, 2012, 3:50 p.m.

Final Regulation

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

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

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

Effective Date: August 29, 2012.

Agency Contact: Myron McClees, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8949, FAX (804) 786-0760, or email myron.mcclees@sbe.virginia.gov.

Summary:

The amendment allows, but does not require, a general registrar or electoral board member to contact a provisional voter who failed to provide identification to remind the voter that his vote will not count unless he provides a copy of the required identification no later than noon on the Friday after election day.

1VAC20-60-60. Provisional votes.

The electoral board or general registrar may attempt to contact an individual who has voted a provisional ballot when required by § 24.2-643 of the Code of Virginia and remind the individual that he is permitted to provide a copy of a form of identification as specified in subsection B of § 24.2-643 of the Code of Virginia to arrive no later than noon on the Friday after election day. However, there shall be no requirement that the electoral board or general registrar contact such individual.

Final Regulation

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

Title of Regulation: **1VAC20-70. Absentee Voting (amending 1VAC20-70-10).**

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

Effective Date: August 24, 2012.

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank St., Richmond, VA 23219, telephone (800) 552-9745 ext: 8925, FAX (804) 786-0760, TTY (800) 260-3466, or email martha.brissette@sbe.virginia.gov.

Summary:

The amendment removes "temporary" from the definition of "Federal only ballot overseas voter."

1VAC20-70-10. Definitions.

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

"Application for an absentee ballot" means an application for an absentee ballot submitted on any form approved for that purpose according to federal and state laws. The term includes a Virginia Absentee Ballot Application (SBE-701), a Virginia Annual Absentee Ballot Application (SBE-703.1), and a Federal Post Card Application (SF-76A). A Federal Write-In Absentee Ballot (SF-186A) is an absentee ballot application only for the voted ballot being submitted and is not an application for future elections.

"Envelope B" means the envelope required by § 24.2-706 of the Code of Virginia which identifies the voter.

"~~Temporary federal~~ Federal only ballot overseas voter" means a United States citizen residing outside the United States indefinitely who has not provided his last date of residence in Virginia. The date the applicant has provided next to his affirmation will serve as his last date of residence.



TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: Enactments 31 through 33 of Chapters 803 and 835 of the 2012 Acts of Assembly

abolished the Pesticide Control Board effective July 1, 2012, and transferred regulations of the board to the Board of Agriculture and Consumer Services. The following action transfers the Pesticide Control Board regulation numbered 2VAC20-20 to the Board of Agriculture and Consumer Services and rennumbers the regulation as 2VAC5-670.

This regulatory action is excluded 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 Agriculture and Consumer Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **2VAC5-670. Rules and Regulations for Enforcement of the Virginia Pesticide Law (adding 2VAC5-670-10 through 2VAC5-670-220).**

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Effective Date: October 10, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-6559 ext: 1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Pesticide Control Board and transferred its duties and responsibilities to the Board of Agriculture and Consumer Services. The legislation was a result of a recommendation of Governor McDonnell's Commission on Government Reform and Restructuring. This regulatory action amends the Pesticide Control Board regulations by renumbering the regulations and placing them under the Virginia Department of Agriculture and Consumer Services in the Virginia Administrative Code.

CHAPTER ~~20~~ 670

RULES AND REGULATIONS FOR ENFORCEMENT OF THE VIRGINIA PESTICIDE LAW

2VAC20-20-10. 2VAC5-670-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. Words used in singular form in this chapter include the plural, and vice versa, as appropriate.

"Active ingredient" means an ingredient which:

1. Is independently capable of:
 - a. Preventing, destroying, repelling, or mitigating insects, fungi, rodents, weeds, nematodes, or other pests; or
 - b. Altering through physiological action the behavior of ornamental or crop plants or their produce; or
 - c. Causing leaves or foliage to drop from a plant; or
 - d. Artificially accelerating the drying of plant tissue.

Regulations

2. Is present in the product in an amount sufficient to be effective; and

3. Is not antagonistic to the activity of the principal active ingredients. The commissioner may require an ingredient to be designated as an active ingredient if, in his opinion, it sufficiently increases the effectiveness of the pesticide to warrant such action.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services.

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed, including any algae or other aquatic weed.

"Law" means Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia, known as the Virginia Pesticide Control Act.

"Rodent" means any animal of the order Rodentia including, but not limited to, rats, mice, rabbits, gophers, prairie dogs, and squirrels.

2VAC20-20-20. 2VAC5-670-20. Language to be used.

All statements, words, and other information required by the law or by this chapter to appear on the label or labeling of any pesticide shall be in the English language. However, in the case of articles intended solely for distribution to points outside the United States, the appropriate foreign language may be used.

2VAC20-20-30. 2VAC5-670-30. Label.

A. The name and address of the manufacturer shall appear on the label. If the registrant's name appears on the label and the registrant is not the manufacturer, or if the name of the person for whom the pesticide was manufactured appears on the label, it must be qualified by appropriate wording such as "Packed for . . .," "Distributed by.. .," or "Sold by....," to show that the name is not that of the manufacturer.

B. The name, brand, or trademark of the pesticide appearing on the label shall be that under which the pesticide is registered.

C. The net content declaration shall comply with the Weights and Measures Act of Virginia, Chapter 56 (§ 3.2-5600 et seq.) of Title 3.2 of the Code of Virginia and its regulations.

D. Directions for use are required for the protection of the public. The public includes not only users of pesticides, but also those who handle them or may be affected by their use, handling, or storage. Pesticides restricted by this chapter shall be registered only for their permitted uses, and the label shall have a prominent statement to the effect that the product is to be used only as directed. Directions for use are considered necessary in the case of most retail containers, with the following exceptions.

Directions may be omitted:

1. If the pesticide is to be used by manufacturers in their regular manufacturing processes, provided that the label

clearly shows that the product is intended for use only in manufacturing processes, and bears an ingredient statement giving the name and percentage of each of the active ingredients.

2. If the pesticide is sold to distributors for dilution or mixing with carriers to prepare pesticides for sale to the public, provided that the label bears an ingredient statement giving the name and percentage of each of the active ingredients; and the pesticide is a well-known substance or mixture of substances; and there is readily available general knowledge of the composition, methods of use, and effectiveness of the product for pesticide purposes.

2VAC20-20-40. 2VAC5-670-40. Ingredient statement.

A. Location of ingredient statement. The ingredient statement shall appear on that part of the label displayed under customary conditions of purchase; except in cases where the commissioner determines that, due to the size or form of the container, a statement on that portion of the label is impractical, and permits the statement to appear on another side or panel of the label. When so permitted, the ingredient statement shall be in larger type and more prominent than would otherwise be required. The ingredient statement shall run parallel with other printed matter on the panel of the label on which it appears, and shall be on a clear contrasting background.

B. Names of ingredients. The well-known common name of the ingredient shall be given or, if the ingredient has no common name, the correct chemical name. If there is no common name and the chemical composition is unknown or complex, the commissioner may permit the use of a new or coined name which he finds to be appropriate for the information and protection of the user. If the use of a new or coined name is permitted, the commissioner may prescribe the terms under which it may be used. A trademark or trade name may not be used as the name of an ingredient, except when it has become a common name.

C. Percentages of ingredients. Percentages of ingredients shall be determined by weight, and the sum of the percentages of the ingredients shall be 100. Sliding scale forms of ingredient statements shall not be used.

D. Designation of ingredients. Active ingredients and inert ingredients shall be so designated, and the term "inert ingredient" shall appear in the same size type and be as prominent as the term "active ingredient".

2VAC20-20-50. 2VAC5-670-50. Pesticides highly toxic to humans.

A. Pesticides which fall within any of the following categories when tested on laboratory animals as specified in subdivisions 1, 2, or 3 of this subsection are highly toxic to humans or contain substances or quantities of substances highly toxic to humans within the meaning of the law. Such pesticides shall be referred to as pesticides highly toxic to

humans. Upon application and after an opportunity for a hearing, the commissioner may exempt any pesticide from these requirements which is not highly toxic to humans:

1. Oral toxicity. A pesticide which has single dose LD50 of 50 milligrams or less per kilogram of body weight, when administered orally to both male and female rats which have been fasted for a period of 24 hours (or to other rodent or nonrodent species specified by the commissioner); or
2. Toxicity on inhalation. A pesticide which has an LC50 of 2,000 micrograms or less of dust or mist per liter of air or 200 parts per million or less by volume of a gas or vapor, when administered by continuous inhalation for one hour to both male and female rodent or nonrodent species specified by the commissioner, if he finds that it is reasonably foreseeable that such concentration will be encountered by humans; or
3. Toxicity by skin absorption. A pesticide which has an LD50 of 200 milligrams or less per kilogram of body weight, when administered by continuous contact for 24 hours with the bare skin of rabbits (or other rodent or nonrodent species specified by the commissioner).

B. Test on other species. Tests on other specified rodent or nonrodent species may be required by the commissioner whenever he finds that tests on other species are necessary to determine whether a pesticide is highly toxic to humans.

C. Terms LD50 and LC50. An LD50 as used in connection with oral toxicity and skin absorption toxicity tests is the dose, and LC50 as used in connection with inhalation tests is the concentration, which is expected to cause death within 14 days in 50% of the test animals so treated.

D. Toxicity based on human experience. If the commissioner finds, after an opportunity for hearing, that available data on human experience with any pesticide indicates a greater toxicity than found in the tests on animals, the human data shall take precedence; and if he finds that the protection of the public so requires, the commissioner shall declare such a pesticide to be highly toxic to humans for the purposes of this law and its regulations.

2VAC20-20-60. 2VAC5-670-60. Warning or caution statement.

A. Warning or caution statements which are necessary and, adequate to prevent injury to humans, useful vertebrate, and invertebrate animals, and useful vegetation, must appear on the label in a place sufficiently prominent to warn the user. They shall state clearly and in nontechnical language the particular hazard involved in the use of the pesticide (e.g., ingestion, skin absorption, inhalation, flammability, or explosion), and the precautions to be taken to avoid accident, injury, or damage.

B. The label of every pesticide shall bear warnings or cautions which are necessary for the protection of the public, including the statement, "Keep out of reach of children," and

a signal word such as "DANGER," "WARNING," or "CAUTION," which the commissioner may prescribe, on the front panel or that part of the label displayed under customary conditions of purchase. However, the commissioner may permit reasonable variations in the placement of that part of the required warnings and cautions other than the statement "Keep out of reach of children" and the required signal word, if in his opinion such variations would not be injurious to the public. If a pesticide is marketed in channels of trade where the likelihood of contact with children is extremely remote, or if the nature of the product is such that it is likely to be used on infants or small children without causing injury under any reasonably foreseeable conditions, the commissioner may waive the requirements of the statement "Keep out of reach of children." The commissioner may permit a statement such as "Keep away from infants and small children" instead of the statement "Keep out of reach of children," if he determines that such a variation would not be injurious to the public.

C. The label of every pesticide which is highly toxic to humans shall bear the words "DANGER" and "POISON" in red on a contrasting background next to the skull and crossbones, and an antidote statement including directions to call a physician immediately, on the front panel or that part of the label displayed under customary conditions of purchase. However, the commissioner may permit reasonable variations in the placement of the antidote statement if some reference such as "See antidote statement on back panel" appears on the front panel near the word "POISON" and the skull and crossbones.

D. Warning or caution statements which comply with the requirements of the regulations for the enforcement of the Federal Insecticide, Fungicide and Rodenticide Act shall be considered in compliance with the requirements of this chapter.

2VAC20-20-70. 2VAC5-670-70. Registration.

A. Eligibility. Any manufacturer, packer, seller, distributor, or shipper of a pesticide is eligible as a registrant and may register the pesticide.

B. Procedure for registration. Application for registration should be made on the form provided. Application forms will be furnished upon request to the Virginia Department of Agriculture and Consumer Services, Office of Pesticide Services, Post Office Box 1163, Richmond, Virginia 23218. Application should be submitted as far in advance as possible, before the time registration is desired to take effect.

C. Effective date of registration. Registration of a pesticide shall become effective on the date the certificate of registration is issued.

D. Responsibility of a registrant. The registrant is responsible for the accuracy and completeness of all information submitted in connection with his application for registration of a pesticide.

E. Changes in labeling or formula.

Regulations

1. Changes in the labeling, or formula of a registered pesticide, shall be submitted in advance to the Office of Pesticide ~~Management~~ Services. The registrant shall describe the exact changes desired and the proposed effective date; and upon request, shall submit a description of tests which justify such changes.

2. After the effective date of a change in labeling or formula, the product shall be marketed only under the new label or formula, except that a reasonable time may be permitted by the commissioner to dispose of properly labeled stocks of old products.

F. Claims shall conform to registration. Claims made for a pesticide shall not differ in substance from representations made in connection with registration, including representations with respect to effectiveness, ingredients, directions for use, or pests against which the product is recommended.

~~2VAC20-20-80.~~ 2VAC5-670-80. **Coloration and discoloration.**

A. Unless exempted by ~~2VAC20-20-130~~ 2VAC5-670-130 of this chapter, the white pesticides hereinafter named shall be colored or discolored in compliance with this section. The hues, values, and chromas specified are those contained in the Munsell Book of Color, Munsell Color Company, Baltimore, Maryland.

B. Coloring agent. The coloring agent shall produce a uniformly colored product not subject to change in color beyond the minimum requirements specified in this chapter during ordinary conditions of marketing or storage. They must not cause the product to become ineffective, or cause damage when used as directed.

C. Arsenicals and barium fluosilicate. Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, and barium fluosilicate shall be colored any hue except the yellow-reds and yellows, having a value of not more than eight and a chroma of not less than four, or shall be discolored to a neutral lightness value not over seven.

D. Sodium fluoride and sodium fluosilicate. Sodium fluoride and sodium fluosilicate shall be colored blue or green having a value of not more than eight and a chroma of not less than four, or shall be discolored to a neutral lightness value not over seven.

E. Exceptions. The commissioner, after the opportunity for a hearing, may permit other hues to be used for any particular purpose, if the prescribed hues are not feasible for the purpose, and if this action will not be injurious to the public.

~~2VAC20-20-90.~~ 2VAC5-670-90. **Misbranding; false or misleading statements.**

Among representations in the labeling of a pesticide which render it misbranded are the following:

1. A false or misleading statement concerning the composition of the product.

2. A false or misleading statement concerning the effectiveness of the product as a pesticide or device.

3. A false or misleading statement about the value of the product for purposes other than as a pesticide or device.

4. A false or misleading comparison with other pesticides or devices.

5. A false or misleading representation as to the safety of the pesticide or of its ingredients, including a statement such as "nonpoisonous," "noninjurious," or "nonhazardous," unless the product is in fact safe from all conditions.

6. Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of this Commonwealth.

7. The name of a pesticide which contains two or more active ingredients, if it suggests the name of one or more but not all such ingredients, even though the names of the other ingredients are stated elsewhere in the labeling.

8. A true statement used in a way which would give a false or misleading impression to the purchaser.

~~2VAC20-20-100.~~ 2VAC5-670-100. **Enforcement.**

A. Collection of samples. Samples of pesticides and devices shall be collected by a designated agent. An official representative sample shall be one which is taken by the commissioner or his duly authorized agent. An unbroken original package shall be taken as the official sample where the pesticide is packed in small bottles or small packages. Where the pesticide is packed in large containers, the official sample shall be a portion taken from one original package in a lot.

B. Examination of samples. Methods of sample examination shall be those adopted and published by the Association of Official Analytical Chemists, where applicable, and any other methods necessary to determine if the product complies with the law.

C. Notice of apparent violation.

1. If from an examination or analysis, a pesticide or device appears to be in violation of the law, a written notice shall be sent to the person against whom criminal proceedings are contemplated, giving him an opportunity to offer a written explanation. The notice shall state the manner in which the sample fails to meet the requirements of the law and this chapter.

2. In addition to his reply to the notice, any person may file, within 20 days of receipt of the notice, a written request for an opportunity to present an oral defense.

3. No notice or hearing shall be required prior to the seizure of any pesticide or device.

~~2VAC20-20-110.~~ 2VAC5-670-110. **Notice of judgment.**

Publication of court judgments in cases heard under the criminal or seizure provision of the law shall be in the form of

notices, circulars, or bulletins as directed by the commissioner.

~~2VAC20-20-120.~~ 2VAC5-670-120. Products for experimental use.

A. Articles for which no permit is required.

1. A substance or mixture of substances being tested only to determine its value as a pesticide, or to determine its toxicity or other properties, and is not considered a pesticide within the meaning of § 3.2-3900 of the Code of Virginia.
2. A pesticide shipped or delivered for experimental use by or under the supervision of any federal or state agency authorized by law to conduct research in the field of economic poisons shall not be subject to the provisions of the law and this chapter.

B. Articles for which permit is required.

1. A pesticide shipped or delivered for experimental use by other qualified persons shall be exempt from the provisions of the law and of this chapter if a permit is obtained beforehand. Permits may be either, specific or general. A specific permit will be issued to cover a particular shipment on a specified date to a named person. A general permit will be issued to cover more than one shipment over a period of time to different persons.
2. If a pesticide is to be tested for a use which is likely to leave residue on or in food or feed, a permit for shipment or delivery will be issued only when:
 - a. The food or feed product will only be used as food or feed for laboratory or experimental animals, or
 - b. Convincing evidence is submitted by the applicant that the proposed use will not produce an amount of residue which would be hazardous to humans or animals.
3. All applications for permits covering shipments for experimental use shall include:
 - a. Name and address of the shipper and places from which the shipment will be made.
 - b. Proposed date of shipment or proposed shipping period, not to exceed one year.
 - c. A statement of the composition of material to be covered by the permit which should apply to a single material or group of closely allied formulations of the material.
 - d. A statement of the approximate quantity to be shipped.
 - e. A statement of the nature of the proposed experimental program, including the type of pests or organisms to be experimented with, the crops or animals for which the pesticide is to be used, the areas where the program will be conducted, and the results of previous tests, where necessary, to justify the quantity requested.

f. The percentage of the total quantity specified under subdivision 3 d of this subsection which will be supplied without charge to the user.

g. A statement that the pesticide is intended for experimental use only.

h. Proposed labeling, which must bear:

- (1) The prominent statement "For experimental use only" on the container label and any accompanying circular or other labeling,
- (2) A warning or caution statement which may be necessary and if complied with, adequate for the protection of those who may handle or be exposed to the experimental substance,
- (3) The name and address of the applicant for the permit,
- (4) The name or designation of the substance, and
- (5) If the pesticide is to be sold, a statement of the names and percentages of the principal active ingredients in the product.

If the shipper submits a copy of the valid experimental permit and accepted labeling issued under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, the commissioner may exempt the shipper from submitting the data and information specified in subdivisions 3 e through h of this subsection.

4. The commissioner may limit the quantity of a pesticide covered by a permit if the available information on effectiveness, toxicity, or other hazards is not sufficient to justify the scope of the proposed experiment and he may impose other limitations in the permit for the protection of the public.

C. Cancellation of permits. Any permit for shipment for experimental use may be cancelled at any time for any violation of its terms.

~~2VAC20-20-130.~~ 2VAC5-670-130. Exemption.

Any pesticide specified in ~~2VAC20-20-80~~ 2VAC5-670-80 of this chapter which is intended solely for use by a textile manufacturer or commercial laundry, cleaner, or dyer as a mothproofing agent, or used in the manufacture or processing or rubber, glue or leather goods, which would not be suitable for such use if colored and which will not come into the hands of the public except when incorporated into a fabric and will not be present in these finished goods in sufficient quantities to cause injury to any person, shall be exempt from the requirements of ~~2VAC20-20-80~~ 2VAC5-670-80.

~~2VAC20-20-140.~~ 2VAC5-670-140. Declaration of pests.

In addition to those pests defined in Article 1 of the law, the commissioner hereby declares as pests the following forms of plant and animal life and viruses:

1. Mammals, including but not limited to dogs, cats, moles, bats, wild carnivores, armadillos, and deer;

Regulations

2. Birds, including but not limited to starlings, English sparrows, crows, and blackbirds;
3. Fishes, including but not limited to the jawless fishes such as the sea lamprey, the cartilaginous fishes such as the sharks, and the bony fishes such as the carp;
4. Amphibians and reptiles, including but not limited to poisonous snakes;
5. Aquatic and terrestrial invertebrates, including but not limited to slugs, snails, and crayfish;
6. Roots and other plant parts growing where not wanted;
7. Viruses, other than those on or in humans or animals.

~~2VAC20-20-150.~~ 2VAC5-670-150. Handling and storage.

No person shall handle, transport, store, display, or distribute pesticides in a manner which may endanger humans and the environment, or food, feed, or any other products that may be transported, stored, displayed, or distributed with the pesticides.

~~2VAC20-20-160.~~ 2VAC5-670-160. Disposal.

No person shall dispose of, discard, or store any pesticides or pesticide containers in a manner which may cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects, or pollute any water supply or waterway.

~~2VAC20-20-170.~~ 2VAC5-670-170. Application and equipment.

A. No person shall apply, dispense, or use any pesticide in or through any equipment or application apparatus unless the equipment or apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material. All pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall be leakproof. All spray distribution systems shall be leakproof, and any pumps which these systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of discharge.

B. All pesticide application equipment shall be equipped with cut-off valves and discharge orifices to enable the operator to pass over nontarget areas without contaminating them. All hoses, pumps, or other equipment used to fill pesticide handling, storage, or application equipment shall be fitted with an effective valve or device to prevent backflow into water supply systems, streams, lakes, other sources of water, or other materials. However, these backflow devices or valves are not required for separate water storage tanks used to fill agricultural pesticide application equipment by gravity systems when the fill spout, tube, or pipe is not allowed to contact or fall below the water level of the application equipment being filled, and no other possible means of establishing a backsiphon or backflow exists.

~~2VAC20-20-180.~~ 2VAC5-670-180. Cancellation authority.

All pesticides which have been cancelled or suspended by the United States Government are subject to cancellation in

Virginia. No registration shall be revoked or refused until the registrant has been given an opportunity for a hearing by the commissioner. Any appeal of cancellation at the federal level shall not affect cancellation proceedings with this Commonwealth.

~~2VAC20-20-190.~~ 2VAC5-670-190. Restricted pesticides.

Unless otherwise specified, federally permitted uses of pesticides will be permitted in Virginia.

~~2VAC20-20-200.~~ 2VAC5-670-200. Additional requirements for highly hazardous pesticides.

When the commissioner has evidence that the use of any highly hazardous pesticide will significantly affect the quality of the environment or the health and safety of individual users, nontarget species, or a geographic area, he shall, with the approval of the board, control the distribution, sale and use of the substance by employing one or more of the following regulatory procedures:

1. Registration of sellers and users;
2. Records and reports on quantities sold and used;
3. Sales and use permits;
4. Certification of compliance to approved label precautions; and
5. Approved supervision of use.

~~2VAC20-20-210.~~ 2VAC5-670-210. Service container labeling.

Containers other than the original registrant's or manufacturer's containers used for the temporary storage or transportation of pesticide concentrates or end-use dilutions, shall bear abbreviated labeling as elaborated below:

PESTICIDE CONCENTRATE

A. If the pesticide to be temporarily stored or transported is a concentrate to be further diluted, the container shall bear a securely attached label with the following information:

1. Product name (brand names from product label);
2. EPA registration number (from product label);
3. Name and percentage of active ingredient(s) from the product label; and
4. Appropriate signal word; i.e., Poison, Danger, Warning, Caution (from product label).

B. The above labeling is required for concentrate service containers, regardless of container type, size, or capacity.

PESTICIDE END-USE DILUTIONS OR END-USE CONCENTRATES

A. If the pesticide to be temporarily stored or transported is to be applied without further dilution, the container shall bear a securely attached label with the following information:

1. Product name (brand name from product label) preceded by the word "Diluted" or "End-Use Concentrate";
2. EPA registration number from concentrate product label;

3. Name of active ingredient(s) and percentage(s) of end-use dilution; and
4. Appropriate signal word: i.e., Poison, Danger, Warning, Caution (from product label).

B. Abbreviated labeling is not required for the following:

1. End-use dilution containers not exceeding three gallons liquid or three pounds dry capacity, when such containers are used as application devices; i.e., hand-held sprayers, dusters, puffers, etc.
2. Containers used by farm supply dealers for the temporary storage or transportation of pesticide concentrate or end-use dilutions, provided that sales invoices or delivery tickets adequately identifying the pesticide(s) accompany each shipment or delivery.
3. On farm concentrate or end-use dilution containers or application equipment used for the temporary storage or transportation of such pesticides for agricultural use.
4. Aircraft-mounted containers used for temporary storage or transportation of concentrate or end-use dilution pesticides, provided that aircraft logs or other documents adequately identifying the pesticide(s) accompany the aircraft.

2VAC20-20-220, 2VAC5-670-220. Mixtures.

A. General sale. Regardless of type container mixtures of pesticides with fertilizers or with other pesticides, when offered for general sale to the public shall be registered prior to sale, distribution, or use. In addition, any pesticide/fertilizer mixture shall be registered or labeled as required by the Virginia Fertilizer Law. All bulk containers shall bear the registered pesticide product label and a copy of the label shall accompany each shipment or delivery.

B. Custom mixtures. Pesticides may be mixed with fertilizers or with other pesticides without label registration when the pesticide product is duly registered, and when such mixtures are not prohibited by the registered pesticide label.

C. When these mixtures are intended for the production of agricultural commodities, the person making the mixtures shall provide the following written or printed information to the applicator or customer:

1. Brand name(s) and EPA registration no.(s) of pesticide product(s);
2. Percentage(s) by weight of active ingredient(s);
3. Directions for application, use, harvest limitations and cropping restrictions; and
4. Precautionary and warning statements sufficient to ensure proper, safe use, and disposal of the mixture.

D. The registered pesticide product label(s) will suffice. All such labeling shall be subject to approval by the commissioner.

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 (~~2VAC20-20~~) (2VAC5-670)

~~Application for Pesticide Product Registration Form, VDACS 07208 (rev. 09/06)~~

[Application for New Pesticide Product Registration Form, VDACS 07208 \(rev. 7/12\).](#)

V.A.R. Doc. No. R13-3274; Filed August 20, 2012, 1:21 p.m.

Final Regulation

REGISTRAR'S NOTICE: Enactments 31 through 33 of Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Pesticide Control Board effective July 1, 2012, and transferred regulations of the board to the Board of Agriculture and Consumer Services. The following action transfers the Pesticide Control Board regulation numbered 2VAC20-30 to the Board of Agriculture and Consumer Services and rennumbers the regulation as 2VAC5-675.

This regulatory action is excluded 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 Agriculture and Consumer Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 2VAC5-675. Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services (adding 2VAC5-675-10 through 2VAC5-675-50).

Statutory Authority: § 3.2-3906 of the Code Virginia.

Effective Date: October 10, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-6559 ext: 1308, FAX (804) 786-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Pesticide Control Board and transferred its duties and responsibilities to the Board of Agriculture and Consumer Services. This legislation was the result of a recommendation of Governor McDonnell's Commission on Government Reform and Restructuring. This regulatory action amends the Pesticide Control Board regulations by renumbering the regulations and placing them under the Virginia Department of Agriculture and Consumer Services in the Virginia Administrative Code.

Regulations

CHAPTER ~~30~~ 675
REGULATIONS GOVERNING PESTICIDE FEES
CHARGED BY THE DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES

Part I
Definitions

~~2VAC20-30-10.~~ **2VAC5-675-10.** Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. All terms defined in Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia are hereby incorporated by reference in this chapter.

"Board" means the ~~Pesticide Control~~ Board of Agriculture and Consumer Services.

"Brand" means any word, name, symbol, device, or any combination thereof, which serves to distinguish a pesticide product manufactured, distributed, sold, or offered for sale by one person from that manufactured, distributed, sold, or offered for sale by any other person.

"COB" means close-of-business.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Department" means the Department of Agriculture and Consumer Services.

"Grade" means formulation of a pesticide, except that the addition of pigments solely for color shall not constitute a change in the formulation such as to constitute a new grade requiring registration.

"Limited quantities" means purchases, at cost, for resale, of less than \$50,000 annually per outlet of products containing nonrestricted use pesticide active ingredients.

"Registered technician" means an individual who renders services similar to those of a certified commercial applicator, but who has not completed all the training or time in service requirements to be eligible for examination for certification as a commercial applicator, and is limited to application of general use pesticides. However, if he applies restricted use pesticides he shall do so only under the direct supervision of a certified commercial applicator.

Part II
Fees

~~2VAC20-30-20.~~ **2VAC5-675-20.** Pesticide product registration fee; registration of new pesticide products; renewal of pesticide product registration.

A. Every pesticide product which is to be manufactured, distributed, sold, offered for sale, used or offered for use within the Commonwealth shall be registered with the commissioner. The fee for registering each brand shall be \$160. If a brand has more than one grade, each grade shall be registered, not the brand at the registration fee then in effect. The registration for a new pesticide product shall be effective upon receipt by the Department of Agriculture and Consumer

Services of the application form accompanied by the required registration fee.

B. All pesticide product registrations shall expire on December 31 of each year unless canceled or otherwise terminated for cause. A registration not canceled or otherwise terminated for cause will be renewed upon receipt of the annual registration fee as set forth in subsection A of this section accompanied by the application renewal form. A registration that has been canceled or otherwise terminated for cause prior to December 31 may be resubmitted as a new registration when the conditions resulting in the cancellation or termination have been resolved. The registration of each brand or grade shall be renewed with the commissioner prior to December 31 of each year. If the registration is not renewed prior to December 31 of each year, the commissioner shall assess a late fee of 20% that shall be added to the registration fee. The late fee shall apply to all renewal registrations submitted to the department any time during the 12-month period following the expiration of the registration. Registrants who permit a registration to lapse for more than one year shall thereafter register the product as a new product. The applicant shall pay the total fee prior to the issuance of the registration by the commissioner.

~~2VAC20-30-30.~~ **2VAC5-675-30.** Commercial applicator certificate fee.

Any person applying for a certificate as a commercial applicator shall pay to the department an initial nonrefundable certificate fee of \$70 and a biennial nonrefundable renewal fee of \$70 thereafter. All certificates shall expire at midnight on June 30 in the second year after issuance unless suspended or revoked for cause. All certificates not suspended or revoked for cause will be renewed upon receipt of the biennial renewal fee. If the applicator does not file an application for renewal of his certificate prior to COB June 30, the commissioner shall assess a late filing fee of 20% that shall be added to the renewal fee. The applicant shall pay the total fee prior to the commissioner's issuance of the renewal. However, if the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination or for any commercial applicator reexamination pursuant to subsection C of § 3.2-3930 of the Code of Virginia shall be \$70 and shall be nonrefundable. Any person applying to add a category or subcategory to his certificate shall pay to the department a nonrefundable fee of \$35. Federal, state, and local government employees certified to use, or supervise the use of, pesticides in government programs shall be exempt from any certification fees.

~~2VAC20-30-40.~~ **2VAC5-675-40.** Registered technician certificate fee.

Any person applying for a certificate as a registered technician shall pay to the department an initial nonrefundable certificate fee of \$30 and a biennial

nonrefundable renewal fee of \$30 thereafter. All certificates shall expire at midnight on June 30 in the second year after issuance unless suspended or revoked for cause. A certificate not suspended or revoked for cause will be renewed upon receipt of the biennial renewal fee. If the application for renewal of any certificate is not filed prior to COB June 30, a late filing fee of 20% shall be assessed and added to the renewal fee and shall be paid by the applicant before the renewal shall be issued. If the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination pursuant to subsection C of § 3.2-3930 of the Code of Virginia shall be \$30 and shall be nonrefundable. Federal, state and local government employees certified to use pesticides in government programs shall be exempt from any certification fees.

2VAC20-30-50, 2VAC5-675-50, Business license fee.

Any pesticide business that distributes, stores, sells, recommends for use, mixes, or applies pesticides shall pay a nonrefundable annual pesticide business licensing fee of \$50 for each location or outlet that he or it operates. All business licenses will expire at midnight on March 31 of each year unless suspended or revoked for cause. If a business license is not suspended or revoked for cause, it will be renewed upon payment of the annual fee. If any person operating as a pesticide business fails to apply for renewal of a pesticide business license by COB March 31 the applicant, as a condition of renewal, shall pay a late license fee of 20% of the licensing fee in addition to that fee. Merchants of limited quantities of nonrestricted use pesticides including grocery stores, convenience stores, drug stores, veterinarians and other businesses who sell pesticides primarily for limited household use shall be exempt from the business license requirement.

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 (~~2VAC20-30~~) (~~2VAC5-675~~)

~~Application for Virginia Pesticide Business License to sell, distribute, store, apply, or recommend pesticides for use, VDACS—07209 (eff. 2/02).~~

~~Commercial Pesticide Applicator Certification Application/Eligibility Requirements for Commercial Applicator Certification, VDACS—07211 (eff. 11/01).~~

~~Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination/Commercial~~

~~Pesticide Applicator Categories, VDACS—07218 (eff. 11/01).~~

~~Application for New Pesticide Product Registration/Additional Information and Instructions, VDACS—07208, (rev. 10/03).~~

~~Application for Reciprocal Pesticide Applicator Certificate/Commercial Pesticide Applicator Categories, VDACS—07210 (eff. 07/00).~~

~~Pesticide Registered Technician Application/General Training Requirements for Registered Technicians, VDACS—07212 (eff. 11/01).~~

[Application for New Pesticide Product Registration/Additional Information and Instructions, VDACS—07208 \(rev. 7/12\).](#)

[Application for Virginia Pesticide Business License to sell, distribute, store, apply, or recommend pesticides for use, VDACS—07209 \(eff. 9/06\).](#)

[Application for Reciprocal Pesticide Applicator Certificate/Commercial Pesticide Applicator Categories, VDACS—07210 \(eff. 5/09\).](#)

[Commercial Pesticide Applicator Certification Application/Eligibility Requirements for Commercial Applicator Certification, VDACS—07211 \(rev. 7/12\).](#)

[Pesticide Registered Technician Application/General Training Requirements for Registered Technicians, VDACS—07212 \(eff. 1/09\).](#)

[Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination/Commercial Pesticide Applicator Categories, VDACS—07218 \(eff. 1/09\).](#)

VA.R. Doc. No. R13-3273; Filed August 20, 2012, 3:13 p.m.

Final Regulation

REGISTRAR'S NOTICE: Enactments 31 through 33 of Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Pesticide Control Board effective July 1, 2012, and transferred regulations of the board to the Board of Agriculture and Consumer Services. The following action transfers the Pesticide Control Board regulation numbered 2VAC20-40 to the Board of Agriculture and Consumer Services and rennumbers the regulation as 2VAC5-680. This regulatory action is excluded 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 Agriculture and Consumer Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 2VAC5-680. Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act (adding 2VAC5-680-10 through 2VAC5-680-110).

Regulations

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Effective Date: October 10, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-6559 ext: 1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Pesticide Control Board and transferred its duties and responsibilities to the Board of Agriculture and Consumer Services. The legislation was a result of a recommendation of Governor McDonnell's Commission on Government Reform and Restructuring. This regulatory action amends the Pesticide Control Board regulations by renumbering the regulations and placing them under the Virginia Department of Agriculture and Consumer Services in the Virginia Administrative Code.

CHAPTER 40 680

REGULATIONS GOVERNING LICENSING OF
PESTICIDE BUSINESSES OPERATING UNDER
AUTHORITY OF THE VIRGINIA PESTICIDE CONTROL
ACT

Part I
Definitions

~~2VAC20-40-10.~~ **2VAC5-680-10. Definition of terms.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. An asterisk following a definition denotes that the definition has been taken from § 3.2-100 or Article 1 (§ 3.2-3900 et seq.) of Chapter 39 of Title 3.2 of the Code of Virginia.

"Board" means the ~~Pesticide Control Board of Agriculture and Consumer Services.~~*

"Bulk pesticide" means any registered pesticide concentrate which is transported or held in an individual container in undivided quantities of greater than 55 U.S. gallons liquid measure or greater than 100 pounds net dry weight.

"Certification" or "certified" means the recognition granted by the ~~Pesticide Control Board of Agriculture and Consumer Services~~ to an applicator upon satisfactory completion of board approved requirements.*

"Commercial applicator" means any person who has completed the requirements for certification as determined by the board to use or supervise the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.*

"Commissioner" means the Commissioner of Agriculture and Consumer Services.*

"Department" means the Department of Agriculture and Consumer Services.*

"EPA" means the United States Environmental Protection Agency.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act as amended, and herein incorporated by reference.

"Licensed" or "licensee" means those businesses which, upon meeting the requirements established by the ~~Pesticide Control Board of Agriculture and Consumer Services~~, are issued a license to engage in the sale, storage, distribution, recommend the use, or application of pesticides in Virginia in exchange for compensation.*

"Limited quantities" means purchases, at cost, for resale, of less than \$50,000 annually per outlet of products containing nonrestricted use pesticide active ingredients.

"Pest management consultant" means any person, who may or may not apply pesticides himself, who has obtained a business license in accordance with the requirements listed below, and who is authorized by this chapter to provide technical advice, supervision or aid, or recommendations for pesticide application commercially in Virginia.

"Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses or bacteria, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest, (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (iii) any substance which is intended to become an active ingredient in any substance defined in clauses (i) and (ii) of this definition.*

"Pesticide business" means any person engaged in the business of distributing, applying, or recommending the use of a product; or storing, selling, or offering for sale pesticides for distribution directly to the user. The term "pesticide business" does not include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations that produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) of this definition are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the board.*

"Pesticide business location" means any fixed location of a pesticide business with either a telephone that is used to transact business or give advice, or where products, supplies or business mail is delivered. Residences of service technicians who are employed by a licensed pesticide business are exempt, if no business solicitation is conducted from that location.

"Private applicator" means an applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural

commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.*

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as restricted by the Administrator of the United States Environmental Protection Agency.*

"Virginia Pesticide Control Act" or "Act" means Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia.

Part II

Procedures for Obtaining a Business License

~~2VAC20-40-20.~~ ~~2VAC5-680-20.~~ General requirements for all pesticide businesses; exemptions.

A. Any person or business operating in Virginia, which, in exchange for compensation, sells, stores, distributes, mixes, applies or recommends for use pesticides, shall obtain a valid pesticide business license pursuant to this chapter. Each pesticide business location shall be licensed.

B. Exempted from the provisions of this chapter are the following:

1. Merchants of limited quantities of nonrestricted use pesticides who sell pesticides primarily intended for limited household use;
2. Federal, state and local governmental agencies;
3. Certified applicators not for hire; including those who use or supervise the use of pesticides as part of their job duties only on property owned or leased by themselves or their employer; and
4. Providers of janitorial, cleaning or sanitizing services if the providers use no pesticides other than sanitizers, disinfectants and germicides.

C. Application for a pesticide business license is made by submitting to the department (i) a completed application form and (ii) a check or money order in the amount of the annual business license fee established by the board.

D. Each applicant for a pesticide business license, or an employee designated by the applicant, shall demonstrate to the commissioner his knowledge of (i) pesticide laws and regulations; (ii) potential hazards of pesticides to man and the environment; and (iii) safe distribution, use, and disposal of pesticides by passing a written examination prior to his being issued a business license. If the applicant is already certified as a commercial applicator, he shall be exempt from the initial examination requirement.

E. All licensed pesticide businesses shall maintain written records pertaining to their operations, as required in this chapter.

F. All licensed pesticide business locations or outlets which sell restricted use pesticides, or distribute restricted use pesticides for purposes of selling, shall have a certified commercial applicator present who shall bear immediate

responsibility for the correct and safe operation of the location or outlet. Each business shall notify the department of the name of the commercial applicator assigned to each location or outlet, and shall also notify the department within three business days of any change in the applicator assignments during the license period.

G. All licensed pesticide businesses that store, repack and distribute bulk pesticides shall meet the requirements established by the board for the storage, repackaging and distribution of bulk pesticides.

H. All pesticide business licenses shall expire at midnight on March 31 of each year. Licensees shall renew their licenses annually by application to the department and payment of the annual fee on or before close of business March 31. The department shall charge a 20% penalty in addition to the regular fee for renewal applications filed after March 31.

~~2VAC20-40-30.~~ ~~2VAC5-680-30.~~ Business licensing requirements for commercial applicators.

Any person mixing or applying any pesticide commercially in Virginia shall either (i) obtain a valid pesticide business license pursuant to ~~2VAC20-40-20~~ ~~2VAC5-680-20~~ A, or (ii) be employed by a currently licensed pesticide business. The business license and fee shall not be considered a substitute for the commercial applicator certification and fee. Possession of a business license does not authorize the licensee to apply restricted use pesticides, nor does it allow a reduction of the fee necessary for an applicator's certification.

~~2VAC20-40-40.~~ ~~2VAC5-680-40.~~ Business licensing requirements for pest management consultants.

A. Any person or business which recommends any pesticide for use commercially in Virginia shall obtain a valid pesticide business license issued pursuant to ~~2VAC20-40-20~~ ~~2VAC5-680-20~~ A. This provision shall exclude sales personnel of a licensed pesticide business, company training, technical and sales representatives certified in the demonstration pesticide applicator category, and governmental employees while performing in an official capacity.

B. The specialty categories for a pest management consultant shall conform to the commercial applicator categories established pursuant to the Act. The pest management consultant shall meet the requirements of the specific category or subcategory in which he is making recommendations for pesticide use prior to being issued a business license.

Part III

Recordkeeping

~~2VAC20-40-50.~~ ~~2VAC5-680-50.~~ General recordkeeping requirements.

A. Records covered in this chapter shall, upon written request, be made available for inspection by the commissioner or his designee during normal business hours. Records not readily available shall be submitted to the commissioner within 72 hours if so requested in writing.

Regulations

Records may be submitted electronically in a manner specified by VDACS, including, but not limited to, electronic mail or by completing any forms provided online by VDACS.

B. Persons possessing records covered in this part (~~2VAC20-40-50~~ 2VAC5-680-50 et seq.) shall fully comply with the requirements contained in the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136 F) and regulations pursuant thereto.

C. Pesticide businesses shall maintain for a period of two years all records required by this chapter.

~~2VAC20-40-60.~~ 2VAC5-680-60. **Recordkeeping of restricted use pesticide sales by pesticide businesses.**

A. Pesticide businesses that sell restricted use pesticides shall maintain a record of each restricted use pesticide sold. Each sales record shall contain the following:

1. Name, address, certified applicator number or business license number, and certificate or license expiration date of the person to whom the restricted use pesticide was sold or delivered;
2. Date of sale;
3. Brand or common product name;
4. EPA registration number; and
5. Quantity of pesticide sold or delivered.

B. The restricted use pesticide sales recordkeeping requirement may be satisfied by invoices, if (i) such invoices are kept separate from the licensee's other sales records, and (ii) the invoices contain the above information.

~~2VAC20-40-65.~~ 2VAC5-680-65. **Recordkeeping of pesticide applications by licensed pesticide businesses.**

Licensed pesticide businesses shall maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

1. Name, address, and telephone number of customer and address or location, if different, of site of application;
2. Name and certification number (or certification number of the supervising certified applicator) of the person making the application;
3. Day, month and year of application;
4. Type of plants, crop, animals, or sites treated and principal pests to be controlled;
5. Acreage, area, or number of plants or animals treated;
6. Brand name or common product name;
7. EPA registration number;
8. Amount of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; and
9. Type of application equipment used.

~~2VAC20-40-70.~~ 2VAC5-680-70. **Recordkeeping of pesticide applications by pesticide businesses.**

Pesticide businesses shall maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

1. Name, address, and telephone number of customer and address or location, if different, of site of application;
2. Name and certification number (or certification number of the supervising certified applicator) of the person making the application;
3. Day, month and year of application;
4. Type of plants, crop, animals, or sites treated and principal pests to be controlled;
5. Acreage, area, or number of plants or animals treated;
6. Brand name or common product name;
7. EPA registration number;
8. Amount of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; and
9. Type of application equipment used.

~~2VAC20-40-80.~~ 2VAC5-680-80. **Evidence of financial responsibility required of a licensed pesticide business.**

A. Prior to being issued a pesticide business license, a business shall furnish evidence of financial responsibility, consisting of a liability insurance policy from a person authorized to do business in Virginia, or a certification thereof, protecting persons who may suffer legal damages as a result of the use of any pesticide by the applicant.

B. The liability insurance policy shall meet the following conditions:

1. The certificate of insurance shall include the name of the insurance company, policy number, insurance amount, type of coverage afforded, any exclusions relating to damage arising from the use of pesticides, and expiration date of the policy. The policy shall cover liability arising out of the handling, storage, application, use or misuse, or disposal of any pesticide; it shall also cover liability relating to completed operations.
2. The policy shall be in an amount specified in subsection C of this section.
3. The licensee shall forward a current certificate of insurance to the board at each insurance renewal date.

C. The amount of financial responsibility as provided for in this section shall be a minimum of \$100,000 for property damage, and \$100,000 for personal injury or death of one person; and \$300,000 per occurrence. The licensee shall maintain at least the minimum coverage at all times during the license period, and shall notify the board at least 10 days prior to any reduction at the request of the licensee or cancellation of such financial responsibility by the insurer. If the deductible of an applicant for a business license is greater than \$1,000, evidence of financial responsibility shall be

furnished to the board to satisfy the difference between the applicant's deductible and the \$1,000 deductible. This evidence may consist of a financial statement.

Part V

Revocation, Suspension or Denial of Business Licenses

~~2VAC20-40-90.~~ 2VAC5-680-90. **Revocation of a business license.**

In addition to the violative acts listed under § 3.2-3940 A of the Code of Virginia, the following are grounds for revocation by the board of a business license:

1. Failure to (i) submit records to the commissioner upon written request; or (ii) to permit any person designated by the commissioner to have access to, and to copy such records of business transactions as may be essential to carrying out the purposes of the Act.
2. Operation of a pesticide business location or outlet without a certified commercial applicator assigned to the location or outlet as required by this chapter.
3. Interference with the commissioner or his duly authorized agents in carrying out the duties imposed by the Act.
4. Conduct by a licensee, as determined during the course of a hearing, which has or might have resulted at any time in substantial danger to, or in unreasonable adverse effects on, the public health, safety, or the environment.
5. Failure of a licensee to notify the department of any change in financial responsibility as specified in ~~2VAC20-40-80~~ 2VAC5-680-80 C.
6. Multiple violations of the Act or regulations pursuant thereto within a three-year period.

~~2VAC20-40-100.~~ 2VAC5-680-100. **Summary suspension by commissioner.**

A. The commissioner may suspend the pesticide business license of any person, without a hearing, simultaneously with the institution of proceedings for a hearing, if he finds there is a substantial danger to the public health, safety, or the environment that warrants this action. Situations that may warrant suspension include, but are not limited to, the following:

1. Operating a pesticide business or pesticide business outlet without a certified commercial applicator on site as required by this chapter, when absence of the applicator presents a substantial danger to the public health, safety, or the environment, as determined by the commissioner.
2. Refusal by a pesticide business, after receipt of a written request, to permit the commissioner or his agent access to and to copy records of business transactions, when such refusal presents a substantial danger to the public health, safety, or the environment, as determined by the commissioner.

B. The commissioner shall institute proceedings for a hearing pursuant to § 2.2-4020 of the Code of Virginia

simultaneously with any summary suspension. Subject to any provision of procedure or chapter of the board for the processing of violations not inconsistent with this chapter:

1. The hearing shall be held within 60 days after the suspension; and
2. The hearing officer conducting the hearing shall have the authority to consider and address all matters relating to the summary suspension, including but not limited to the withdrawing, sustaining, or modifying thereof.

The commissioner or a conference officer appointed by the commissioner shall offer the person whose license has been summarily suspended (hereinafter "the respondent") an opportunity to appear in an informal conference, authorized by § 2.2-4019 of the Code of Virginia, to be held within three days after the summary suspension. The informal conference may consider, subject to any provision of the board for the processing of violations, all matters relating to the summary suspension, including but not limited to the withdrawal, sustaining, or modifying thereof. Nothing in this section authorizing consideration of matters by an informal conference shall be construed to deny a respondent's right to a hearing.

C. No person may operate a pesticide business at any time when his license is suspended.

~~2VAC20-40-110.~~ 2VAC5-680-110. **Denial of license by the commissioner.**

A. The commissioner shall deny a business license to any applicant who does not submit all the information required on the license application form, or who does not fully comply with all requirements for licensing set forth in this chapter.

B. The commissioner may, after notice to a pesticide business applicant and after opportunity for hearing, deny a pesticide business license to an applicant who has violated the pesticide law or regulations of any state or competent authority so as to evidence a disregard for proper and safe pesticide use; or if his license has been denied, suspended, nullified, withdrawn, revoked, or otherwise terminated by any state or other competent authority.

C. Any applicant for a pesticide business license shall not engage in the activity for which he is requesting a license until the commissioner shall have issued it.

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 (~~2VAC20-40~~) (2VAC5-680)

~~Application for Virginia Pesticide Business License, Form VDACS 07209 (rev. 11/05).~~

Regulations

~~Certificate of Insurance, Form VDACS-07214 (rev. 4/96).~~

~~Request to take the Virginia Pesticide Business License Examination (rev. 8/06).~~

[Application for Virginia Pesticide Business License, Form VDACS-07209 \(rev. 9/06\).](#)

~~Certificate of Insurance, Form VDACS-07214 (rev. 4/96).~~

~~Request to take the Virginia Pesticide Business License Examination (rev. 1/09)~~

VA.R. Doc. No. R13-3272; Filed August 20, 2012, 3:51 p.m.

Final Regulation

REGISTRAR'S NOTICE: Enactments 31 through 33 of Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Pesticide Control Board effective July 1, 2012, and transferred regulations of the board to the Board of Agriculture and Consumer Services. The following action transfers the Pesticide Control Board regulation numbered 2VAC20-51 to the Board Agriculture and Consumer Services and renumbers the regulation as 2VAC5-685.

This regulatory action is excluded 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 Agriculture and Consumer Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **2VAC5-685. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act (adding 2VAC5-685-10 through 2VAC5-685-210).**

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Effective Date: October 10, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-6559 ext: 1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Pesticide Control Board and transferred its duties and responsibilities to the Board of Agriculture and Consumer Services. The legislation was a result of a recommendation of Governor McDonnell's Commission on Government Reform and Restructuring. This regulatory action amends the Pesticide Control Board regulations by renumbering the regulations and placing them under the Virginia Department of Agriculture and Consumer Services in the Virginia Administrative Code.

CHAPTER 51 685

REGULATIONS GOVERNING PESTICIDE APPLICATOR CERTIFICATION UNDER AUTHORITY OF VIRGINIA PESTICIDE CONTROL ACT

Part I

Definitions

~~2VAC20-51-10.~~ **2VAC5-685-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. An asterisk or double asterisk following a definition indicates that the definition has been taken from the Virginia Pesticide Control Act, Article 1 (§ 3.2-3900 et seq.) or Article 4 (§ 3.2-3935 et seq.), respectively, of Chapter 39 of Title 3.2 of the Code of Virginia.

"Accident" means an unexpected, undesirable event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Act" means the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia).

"Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons, primarily for sale, consumption, propagation, or other use by man or animals.*

"Board" means the ~~Pesticide Control Board~~ Pesticide Control Board of Agriculture and Consumer Services.*

"Board-approved training" means a course which includes, at a minimum, study and review of all the material contained in an edition used in Virginia of (i) a basic pesticide applicator certification training core manual and (ii) a certification training manual for each specific category pertaining to the type of pesticide application to be done.

"Certificate" means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3 (§ 3.2-3929 et seq.) of Chapter 39 of Title 3.2 of the Code of Virginia.

"Certification" or "certified" means the recognition granted by the ~~Pesticide Control Board~~ Pesticide Control Board of Agriculture and Consumer Services to an applicator upon satisfactory completion of board-approved requirements.*

"Chemigation" means the application of any pesticide through an irrigation system.

"Commercial applicator" means any applicator who has completed the requirements as determined by the board, including appropriate training and time in service, to apply for a certification, and who uses or supervises the use of any pesticide for any purpose or on any property, other than as provided in the definition of private applicator.*

"Commercial applicator not for hire" means any commercial applicator who uses or supervises the use of pesticides as part

of his job duties only on property owned or leased by him or his employer. It also applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.‡

"Competent person" means a person having the demonstrated ability to perform the task to which he is assigned.

"Department" means the Department of Agriculture and Consumer Services.‡

"Drift" means the physical movement of pesticide through the air at the time of pesticide application or soon thereafter from the target site to any nontarget or off-target site. Pesticide drift will not include movement of pesticides to nontarget or off-target sites caused by erosion, migration, volatility, or windblown soil particles that occurs after application unless specifically addressed on the pesticide product label with respect to drift control requirements.

"EPA" means the United States Environmental Protection Agency.

"Fumigant" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors that will destroy vermin, rodents, insects, and other pests, and are usually lethal, poisonous, noxious, or dangerous to human life.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.*

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.*

"Incident" means a definite and separate occurrence or event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.*

"Knowledge" means the possession and comprehension of pertinent facts, together with the ability to use them in dealing with specific problems and situations within the pesticide context.

"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.*

"Labeling" means all labels and other written, printed, or graphic matter (i) upon the pesticide or device or any of its containers or wrappers, (ii) accompanying the pesticide or device at any time, or (iii) to which reference is made on the

label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.*

"Licensed" or "licensee" means those businesses which, when meeting the requirements established by the ~~Pesticide Control Board of Agriculture and Consumer Services~~, are issued a license to engage in the sale, storage, distribution, recommend the use, or application of pesticides in Virginia in exchange for compensation.*

"Marine antifoulant paint" means any compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.**

"Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest; (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (iii) any substance which is intended to become an active ingredient thereof.*

"Pesticide business" means any person engaged in the business of: distributing, applying or recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the user. The term "pesticide business" does not include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations which produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the board.*

"Private applicator" means an applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.*

"Registered technician" means an individual who renders services similar to those of a certified commercial applicator, but who has not completed all the training or time in service requirements to be eligible for examination for certification as a commercial applicator and is limited to application of general use pesticides. However, if he applies restricted use

Regulations

pesticides he shall do so only under the direct supervision of a certified commercial applicator.*

"Registered technician not for hire" means any registered technician who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. It also applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

"Repeat violation" means another violation following the first violation of the same provision of the Virginia Pesticide Control Act or the federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136 et seq.), or regulations adopted pursuant thereto, committed within a three-year period commencing with the date of official notification of the first violation of the provision.

"Restricted entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified for restricted use by the administrator of the EPA under the provisions of 1947 (7 USC § 3(d)(1)(c)) of the federal Insecticide, Fungicide, and Rodenticide Act (as amended).

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the commissioner shall declare to be a pest.*

"Tributyltin compounds" means any compound having three normal butyl groups attached to a tin atom and with or without an anion such as chloride, fluoride, or oxide.**

"Under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person.*

"Under the direct on-site supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and is physically present on the property upon which the pesticide is being applied, and is in constant visual contact with the person applying the pesticide.

"Use" means the employment of a pesticide for the purposes of (i) preventing, destroying, repelling, or mitigating any pest or (ii) regulating plant growth, causing defoliation or desiccation of plants. The term "use" shall include application or mixing, and shall include handling or transfer of a pesticide after the manufacturer's original seal is broken. The term "use" shall also include any act with respect to a particular pesticide which is consistent with the label directions for that particular pesticide.*

"Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of

transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.**

2VAC20-51-20, 2VAC5-685-20. General requirements for certification.

A. The following persons must be certified as pesticide applicators:

1. Commercial applicators;
2. Registered technicians; and
3. Private applicators.

B. Commercial applicators not for hire must be certified only when using any pesticide in the following areas except as noted in subsection C of this section:

1. Areas open to the general public at daycare facilities, educational institutions, health care facilities, and convalescent facilities;
2. Areas where open food is stored, processed, or sold; and
3. Recreational lands over five acres in size.

C. Employees of local, state, and federal governmental agencies who use or supervise the use of any pesticide on any area in the performance of their official duties must be certified as either commercial applicators not for hire or registered technicians, but they are exempt from any certification fees.

D. All persons desiring certification as pesticide applicators must:

1. Complete board-approved training appropriate for the desired classification;
2. Submit a completed application to the commissioner; and
3. Pass required examination(s).

a. Applicants who do not pass the examination on their first attempt are eligible to be reexamined for the same category 10 days from the date of the first examination.

b. Applicants who fail on the second or subsequent attempts must wait 30 days from the date of the last examination before being reexamined in the same category.

c. Applicants requesting reexamination must resubmit a completed application to the commissioner or his duly authorized agent and pay the nonrefundable applicator certification fee as determined by ~~2VAC20-30~~ 2VAC5-675, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.

E. Persons with a history of repeat violations of federal or state pesticide laws or whose certification or pesticide business license has been revoked within the two-year period immediately prior to application are not eligible for certification. Such persons may appear before the board to show why they should be granted certification as outlined under provisions of § 3.2-3940 E of the Code of Virginia.

F. Applicants for certification cannot engage in the activity for which they are requesting certification, unless participating in supervised direct on-site training, until certification has been issued by the commissioner. Commercial applicators may not apply pesticides in any category or subcategory activity until they have passed the category-specific examination and obtained the appropriate certification.

G. A commercial or private applicator or registered technician may request a duplicate of the certification card if the applicator's or technician's card has been lost, stolen, mutilated or destroyed. The department shall issue a duplicate card to the applicator or technician upon payment of the costs of duplication.

~~2VAC20-51-30.~~ 2VAC5-685-30. Specific certification requirements for commercial applicators.

A. In addition to the general requirements listed in ~~2VAC20-51-20~~ 2VAC5-685-20, applicants for commercial applicator certification shall meet the following requirements:

1. Certification as a registered technician, as well as employment as a registered technician for at least a year; or
2. One year of education, training, or experience in a pesticide related field which provides the equivalent practical knowledge of proper pesticide use required of a registered technician.

B. The application process for commercial applicators is as follows:

1. The application must be in writing to the commissioner; and
2. The application must contain:
 - a. Name;
 - b. Principal business address in the Commonwealth and elsewhere;
 - c. Qualifications and proposed operations; and
 - d. Classification(s) desired.

Individuals seeking certification as commercial applicators must pay a fee as determined by ~~2VAC20-30~~ 2VAC5-675, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.

C. Applicants shall, within 90 days after submitting the application and paying the fee, report to an authorized testing location and take the required examinations.

D. Aerial pesticide application applicants must meet the requirements of the Federal Aviation Agency, the Department of Aviation of the Commonwealth, and any other applicable federal or state laws or regulations to operate aerial equipment.

~~2VAC20-51-40.~~ 2VAC5-685-40. Specific certification requirements for private applicators.

A. Each applicant for a private applicator's certificate shall apply to the commissioner and then report to an authorized testing location within 90 days and take an examination for each certification category, specified in ~~2VAC20-51-80~~ 2VAC5-685-80, applicable to his operation. The application shall contain the applicant's name, address and classification desired for certification.

B. Persons who cannot read or understand labels shall not be certified as private applicators unless they demonstrate competence to apply restricted use pesticides on their own properties. After consulting the appropriate Virginia Cooperative Extension agent, a department pesticide investigator may recommend that the board grant a waiver of the literacy requirement. Persons certified under this waiver shall obtain certification in the categories of limited certificate or single product certification as described in ~~2VAC20-51-80~~ 2VAC5-685-80.

~~2VAC20-51-50.~~ 2VAC5-685-50. Certification procedures for registered technicians.

A. In addition to the general requirements listed in ~~2VAC20-51-20~~ 2VAC5-685-20, individuals seeking certification as registered technicians must:

1. Receive on-the-job training in the proper application of pesticides under the direct on-site supervision of a certified commercial applicator for at least 20 hours during the six-month period prior to applying for certification;
2. Complete at least 20 hours of board-approved training;
3. Submit an application form with the fee established by regulations of the ~~Pesticide Control~~ Board of Agriculture and Consumer Services; and
4. Take the examination within 90 days after an individual is hired or transferred into a position where duties and functions involve the commercial use of pesticides. Individuals not passing the examination on the first attempt must reapply, following the procedures outlined in ~~2VAC20-51-20~~ 2VAC5-685-20 D 3, and retake the examination within 30 days after the first attempt. Individuals failing to take and pass the exam within 30 days of the initial exam may not apply pesticides commercially, even under direct on-site supervision, until they pass the examination.

B. Before registered technicians begin working in any application category or subcategory that is different from the category in which they received their original training, they shall receive additional training from a commercial applicator in the following aspects of pesticide application as it relates to the proposed category or subcategory of work:

1. Pesticides to be used, including reading and understanding the label;
2. Application equipment and techniques;

Regulations

3. Pests to be controlled;
4. Personal protective equipment and clothing; and
5. Environmental concerns, including storage and disposal of pesticides applied.

The commercial applicator providing training to a registered technician shall be certified in the category or subcategory for which he is providing the training and shall provide proof to the department of such training on forms provided by the department. Such forms must be received by the department within 10 calendar days of the completion of such training.

2VAC20-51-60. 2VAC5-685-60. Persons exempt from certification.

The following persons are exempt from certification:

1. Persons conducting laboratory research involving restricted use pesticides;
2. Doctors of medicine or doctors of veterinary medicine applying pesticides as drugs or medication during the course of their practice, or to control pests in corpses;
3. Persons who use or supervise the use of nonrestricted use pesticides as part of their duties only on properties owned or leased by their employers, except those persons identified in ~~2VAC20-51-20~~ 2VAC5-685-20 B;
4. Persons who provide janitorial or cleaning services using nonrestricted use sanitizers, disinfectants, and germicides;
5. Painters who apply restricted use marine antifoulant paint under the direct supervision of a commercial applicator. One commercial applicator shall be present for every eight painters;
6. Forestry applicators standing on the ground who apply general use herbicides for forest vegetation control and tree thinning under the direct on-site supervision of a commercial applicator. One commercial applicator shall be present for every eight forestry applicators and be within voice contact of and no more than 200 feet from such applicators;
7. Individuals engaged in the training required for certification while under the direct on-site supervision of a certified applicator;
8. Employees of local, state, or federal governmental agencies who from time to time make incidental use of ready-to-use pesticides that are properly registered in Virginia. For purposes of this section, "incidental use" means the use of a pesticide on an occasional, isolated, site-specific basis in order to avoid immediate personal harm from stinging or biting insects. This exemption does not include regular, routine, or maintenance applications of pesticides or any use of restricted-use pesticides;
9. Individuals who apply pesticides for the survey for gypsy moth under the authority of the department; and
10. Individuals who apply pesticides for the survey for cotton boll weevil under the authority of the department.

Part III

Categories of Pesticide Applicator Certification

2VAC20-51-70. 2VAC5-685-70. Categories for commercial applicator certification.

A. Commercial applicators must be certified in one or more of the following commercial applicator categories or subcategories:

1. Agricultural pest control.
 - a. Agricultural plant pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in production of agricultural crops, or on grasslands, or noncrop agricultural lands.
 - b. Agricultural animal pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides on agriculturally related animals.
 - c. Fumigation of soil and agricultural products. This subcategory is for commercial applicators who will be using or supervising the use of pesticides for soil fumigation in production of an agricultural commodity and the application of pesticides for fumigation of agricultural products. Certification in this subcategory requires concurrent certification in the agricultural plant pest control category.
 - d. Chemigation. This subcategory is for commercial applicators who will be using or supervising the use of pesticides through an irrigation system. Certification in this subcategory requires concurrent certification in the agricultural plant pest control category.
2. Forest pest control. This category is for commercial applicators who will be using or supervising the use of pesticides in forests, forest nurseries, and seed orchards.
3. Ornamental and turf pest control.
 - a. Ornamental pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in the maintenance and production of ornamental trees, shrubs, and flowers in and out-of-doors.
 - b. Turf pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in the production and maintenance of turf, including, but not limited to, turf in golf courses, residential lawns, parks, and cemeteries.
4. Seed treatment (excluding fumigation). This category is for commercial applicators who will be using or supervising the use of pesticides on seeds.
5. Aquatic pest control.
 - a. Aquatic pest control - general. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in or on standing or running water, for the express purpose of controlling pests. This excludes applicators engaged in public health related

- activities included in subdivision 8 of this subsection, public health pest control.
- b. Marine antifoulant paints. This subcategory is for commercial applicators who will be using or supervising the use of marine antifoulant paints containing tributyltin or other restricted use pesticides.
6. Right-of-way pest control. This category is for commercial applicators who will be using or supervising the use of pesticides in the maintenance of public rights-of-way and in the maintenance of fence lines, structural perimeters or other similar areas.
7. Industrial, institutional, structural, and health-related pest control.
- a. General pest control (excluding fumigation). This subcategory is for commercial applicators who will be using or supervising the use of pesticides to control household type pests, pests that inhabit or infest structures, stored products, and residential food preparation areas, and pests capable of infesting or contaminating foods and foodstuffs at any stage of processing facilities.
- b. Wood-destroying pest control (excluding fumigation). This subcategory is for commercial applicators who will be using or supervising the use of pesticides to control organisms that destroy structures made of wood.
- c. Fumigation. This subcategory is for commercial applicators who will be using or supervising the use of fumigant-type pesticides.
- d. Vertebrate pest control (excluding structural invaders). This subcategory is for commercial applicators who will be using or supervising the use of pesticides to control vertebrate pest animals.
- e. Sewer root pest control. This subcategory is for commercial applicators who use pesticides for sewer line root control.
8. Public health pest control. This category is for commercial applicators who will be using or supervising the use of pesticides for the management and control of pests having medical and public health significance.
9. Regulatory pest control. This category is for federal, state, and local governmental employee applicators who will be using or supervising the use of pesticides in the control of regulated pests.
10. Demonstration and research pest control. This category is for commercial applicators who will be demonstrating the proper use and techniques of application of pesticides (including classroom demonstration), or who will be supervising such demonstration. It also includes applicators who will be conducting pesticide research on greenhouse or field plots.
11. Aerial pesticide application. This category is for commercial applicators who will be using or supervising the use of any pesticide applied by fixed- or rotary-wing aircraft.
12. Wood preservation and wood product treatment. This category is for commercial applicators who will be using or supervising the use of pesticides at treating plants and sawmills for preservative treatment of wood and wood products.
13. Miscellaneous. This category is to be used to designate categories or subcategories of commercial applicators using specific pesticides or uses for which the U.S. EPA may mandate certification in order to allow for the pesticide or use.
- B. A commercial applicator certified in one category and seeking initial certification in one or more additional categories shall meet the certification requirements of each of the new categories in which he desires certification.
- ~~2VAC20-51-80.~~ 2VAC5-685-80. Categories for private applicator certification.**
- Private applicators who apply or supervise the application of restricted use pesticides shall be certified in one or more of the following categories:
1. Food, fiber, forestry products, and commodity production. Includes private applicators who use or supervise the use of restricted use pesticides: in the production of agricultural crops, including fumigation and chemigation; forestry products; on animals; in places where animals are confined; for the control of vertebrate pests of agricultural crops and livestock animals; in the production of agricultural commodities; and for the fumigation of agricultural products.
 2. Ornamental production. Includes private applicators who use or supervise the use of restricted use pesticides to control pests: in tree nurseries; shrub nurseries; ornamental plant nurseries; flower nurseries; in greenhouses used for breeding and growing ornamental plants; in irrigation systems; and in ornamental production using fumigants.
 3. Limited certificate--single product/single use. Includes private applicator applicants who are seeking authorization to apply a single restricted use pesticide for a single identified purpose. This category is intended for limited use under special or emergency circumstances as identified by the board on a case-by-case basis.
 4. Single product certification. Includes private applicator applicants who are seeking authorization to apply a single identified restricted use product, or related restricted use products with the same active ingredient and with a similar formulation and use. This category is intended for limited use under special or emergency circumstances as identified by the board.

Regulations

Part IV

Knowledge Required for Certification of Pesticide Applicators

~~2VAC20-51-90.~~ 2VAC5-685-90. Determination of general knowledge and qualifications for private and commercial applicators and registered technicians.

A. Applicants shall be tested on their knowledge and qualifications concerning the use and handling of pesticides. The examination will test the applicants' general knowledge required for all categories, and the additional knowledge specifically required for each category or subcategory in which an applicator desires to be certified.

B. All applicants for certification as private or commercial applicators or registered technicians shall demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides, as contained in a basic pesticide applicator certification training core manual. Testing will be based on problems and situations in the following areas:

1. Federal and Commonwealth of Virginia pesticide laws and regulations;
2. Understanding and interpreting pesticide labels;
3. Handling of accidents and incidents;
4. Proper methods of storing, mixing/loading, transporting, handling, applying, and disposing of pesticides;
5. Safety and health, including proper use of personal protective equipment;
6. Potential adverse effects caused by the application of pesticides under various climatic or environmental conditions, such as drift from the target area, pesticide run-off, ground water and drinking water contamination, and hazard to endangered species; and
7. Recognizing common pests and general pest biology.

~~2VAC20-51-100.~~ 2VAC5-685-100. Specific knowledge required for the categories of commercial applicators.

Applicants for commercial applicator certification shall possess the skills and knowledge associated with the chosen category(s) as they pertain to those items listed in ~~2VAC20-51-90~~ 2VAC5-685-90 B 1 through 6, including recognizing category specific pests and their biology as contained in the appropriate Virginia category specific training manual(s).

~~2VAC20-51-110.~~ 2VAC5-685-110. Specific knowledge required for the categories of private applicators.

Applicants for private applicator certification shall possess the skills and knowledge associated with the chosen category(s) as they pertain to those items listed in ~~2VAC20-51-90~~ 2VAC5-685-90 B 1 through 6, including recognizing category specific pests and their biology as contained in a Virginia category specific certification training manual(s).

~~2VAC20-51-120.~~ 2VAC5-685-120. Specific knowledge required for registered technicians.

In addition to the skills and knowledge required in ~~2VAC20-51-90~~ 2VAC5-685-90 B 1 through 6, the applicant shall obtain the required amount of on-the-job training as discussed in ~~2VAC20-51-50~~ 2VAC5-685-50.

Part V

Renewal of Certification and Certificates

~~2VAC20-51-130.~~ 2VAC5-685-130. Renewal of certification.

A. Any certified pesticide applicator or registered technician who desires to renew his certification shall do so biennially for the category or subcategory for which he is certified. All applicators must first attend board-approved recertification course(s) and submit proof of attendance at such courses, or be reexamined in basic pesticide safety and the categories desired for recertification. In addition to the above requirement, commercial applicators and registered technicians shall also pay the biennial certificate fee and submit an application for renewal before the commissioner will renew their certification.

B. Certified applicators may accumulate up to four years of credit by attending board-approved recertification courses.

C. Upon expiration of certification, the applicator's certificate shall become invalid. Any pesticide applicator or registered technician who desires to renew his certification, but fails to do so within 60 days after its expiration, shall be reexamined.

~~2VAC20-51-140.~~ 2VAC5-685-140. Reexamination.

Reexamination or special examination will be required by the board of any commercial applicator or registered technician under the following circumstances:

1. Certificate has been suspended or revoked;
2. Significant technological advances have occurred in the category or subcategory for which the applicator or registered technician has been certified, requiring additional knowledge;
3. Additional standards established by the EPA require reexamination;
4. Commercial applicator or registered technician desires certification in an additional category; or
5. Regulations require reexamination.

Part VI

Suspension and Revocation of Certificates

~~2VAC20-51-150.~~ 2VAC5-685-150. Summary suspension by commissioner.

A. The commissioner may summarily suspend the certificate of any person without a hearing if he finds there is any substantial danger, or threat of substantial danger, to the public health, safety, or environment which warrants the summary suspension. The commissioner shall schedule a

hearing for a date not exceeding five working days after the date of the summary suspension.

B. No person whose certificate has been suspended may engage in the activity for which he had been certified.

~~2VAC20-51-160.~~ 2VAC5-685-160. Revocation of certificate by the board.

A. The board may, after opportunity for a hearing, deny, suspend, revoke or modify a certificate upon any violation of any act set out in § 3.2-3940 B of the Code of Virginia.

B. If the board imposes a civil penalty upon a person and such civil penalty is not paid within 60 days thereof, the certificate of such person shall automatically be suspended until payment in full is made. If the person appeals the board's order imposing the civil penalty, then the person may forward the proposed amount of the civil penalty to the commissioner's office for placement in an interest-bearing trust account in the State Treasurer's office. Upon such an amount being held, the suspension shall not be imposed or shall be lifted, as the case may be. This provision relates only to a suspension caused by a failure to pay the civil penalty and does not affect any suspension or revocation of a certificate for any other reason.

Part VII

Reporting of Pesticide Accidents, Incidents, or Loss

~~2VAC20-51-170.~~ 2VAC5-685-170. Reporting of pesticide accidents and incidents.

A. Commercial or private applicators or registered technicians shall report any pesticide accident or incident in which they are involved that constitutes a threat to any person, to public health or safety, or to the environment, as a result of the use or presence of any pesticide. The accident or incident shall be reported whether or not a restricted use pesticide is involved.

B. When the accident or incident involves a discharge or spillage of a pesticide, the applicator shall contact the department for guidance to determine whether the discharged or spilled amount is a reportable quantity.

C. The applicator shall make the initial notification to the department's Office of Pesticide Services by telephone within a reasonable time, not to exceed 48 hours after the accident or incident occurrence, should circumstances prevent immediate notification. The applicator shall prepare and submit a written report of the accident or incident to the Office of Pesticide Services within 10 working days after the initial notification. The report shall include the following:

1. Name of individuals involved in accident or incident;
2. Name of pesticide involved;
3. Quantity of pesticide spilled, and containment procedures;
4. Time, date, and location of accident or incident;
5. Mitigating actions taken; and

6. Name (or description if unnamed) and location of bodies of water nearby where contamination of such bodies of water could reasonably be expected to occur due to natural or manmade actions.

Part VIII

Reciprocal Agreement

~~2VAC20-51-180.~~ 2VAC5-685-180. Issuance of a certificate on a reciprocal basis.

A. A person who is certified by another state or by a federal agency may make written application to the commissioner, or his duly authorized agent, for issuance of a certificate on a reciprocal basis without examination, in accordance with ~~§ 3-1-249.57~~ 3.2-3934 of the Code of Virginia. Along with his written application, an applicant shall either (i) present an original certificate issued by the state of origin or issued by a federal agency or (ii) request that the state of origin or federal agency send an attested copy of the applicant's certification directly to the commissioner or his duly authorized agent.

The applicant shall either include a document granting power of attorney to a resident of Virginia to receive process or provide proof that the applicant has appointed a registered agent under the laws of the Commonwealth. Reciprocal certification shall not be granted based on reciprocal certification issued in another state.

B. Any certificate issued on a reciprocal basis may be suspended in the same manner and on the same grounds as a Virginia certificate pursuant to the provisions of Chapter ~~44-1~~ (~~§ 3-1-249.27 et seq.~~) of ~~Title 3-1~~ 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia. A certificate issued on a reciprocal basis may also be suspended if the nonresident's original certificate or federal certification is suspended or revoked.

~~2VAC20-51-190.~~ 2VAC5-685-190. Reciprocal recertification.

Reciprocal recertification shall be granted to out-of-state applicators if they: (i) maintain certification in their home state; (ii) provide proof of current certification to the commissioner prior to the date of Virginia certification expiration; (iii) are currently certified in a state that grants reciprocal recertification to Virginia applicators in like categories; and (iv) have met all other Virginia requirements for recertification.

Part IX

Recordkeeping

~~2VAC20-51-200.~~ 2VAC5-685-200. General recordkeeping requirements for commercial applicators not for hire and registered technicians not for hire.

A. Commercial applicators not for hire and registered technicians not for hire, being exempt from the pesticide business license requirement of the board and the recordkeeping requirements under this license, are required to maintain pesticide application records as prescribed in this chapter. These records shall be maintained by the commercial

Regulations

applicator not for hire and the registered technician not for hire for a period of two years.

B. Records governed by this regulation shall be made available for inspection by the commissioner, or his duly authorized agent, during normal business hours upon written request. Records not readily available shall be submitted to the commissioner within 72 hours, if so requested in writing.

C. Persons possessing records governed by this part shall fully comply with the requirements contained in 7 USC § 136f and regulations adopted pursuant thereto.

~~2VAC20-51-210. 2VAC5-685-210. Specific recordkeeping requirements for commercial applicators not for hire and registered technicians not for hire.~~

Commercial applicators not for hire and registered technicians not for hire shall maintain a record of each pesticide applied, containing the following:

1. Name of property owner, address or location, and, as applicable, phone number of the site of application;
2. Name and certification number (or certification number of the supervising certified applicator) of the person making the application;
3. Day, month, and year of application;
4. Type of plants, crops, animals, or sites treated and principal pests to be controlled;
5. Acreage, area, or number of plants or animals treated;
6. Brand name or common product name of pesticide used;
7. EPA registration number;
8. Amounts of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; and
9. Type of application equipment used.

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 (~~2VAC20-51~~) (~~2VAC5-685~~)

~~Record of Required Additional Registered Technician Training (eff. 12/08).~~

~~Commercial Pesticide Applicator Certification Application - A, Form VDACS 07211 (eff. 11/01).~~

~~Pesticide Registered Technician Application Form VDACS-07212 (eff. 11/01).~~

~~Private Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination at Department of Motor Vehicles Customer Service Center (eff. 12/98).~~

~~Application for Reciprocal Pesticide Applicator Certificate, Form VDACS 07210 (eff. 7/00).~~

~~Power of Attorney (not dated).~~

~~Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination - B, Form VDACS 07218 (eff. 11/01).~~

[Commercial Pesticide Applicator Certification Application - A, Form VDACS-07211 \(rev. 07/12\).](#)

[Commercial Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination - B, Form VDACS-07218 \(eff. 1/09\).](#)

[Commercial Pesticide Applicator Certification Exam bubble answer sheet, 2003.](#)

[Private Pesticide Applicator Certification Exam bubble answer sheet, 2003.](#)

~~Virginia Registered Technician Certification Examination Answer Sheet (eff. 2/98).~~

~~Not For Hire Virginia Registered Technician Certification Examination Answer Sheet (eff. 2/98)~~

[Private Pesticide Applicator Request for Authorization to Take Pesticide Applicator Examination at Department of Motor Vehicles Customer Service Center \(eff. 1/09\).](#)

~~Power of Attorney (not dated).~~

[Proof of Additional Category Specific Training for Registered Technicians \(eff. 3/12\).](#)

[Application for Reciprocal Pesticide Applicator Certificate, Form VDACS-07210 \(eff. 5/09\).](#)

[Pesticide Registered Technician Application Form VDACS-07212 \(eff. 1/09\).](#)

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PESTICIDE CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: Enactments 31 through 33 of Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Pesticide Control Board and transferred the regulations of the board to the Department of Agriculture and Consumer Services.

This regulatory action is excluded 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 of Agriculture and Consumer Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **2VAC20-11. Public Participation Guidelines (repealing 2VAC20-11-10 through 2VAC20-11-110).**

Statutory Authority: §§ 2.2-4007.02 and 3.2-3906 of the Code of Virginia.

Effective Date: October 10, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Pesticide Control Board and transferred its duties to the Board of Agriculture and Consumer Services. This action repeals 20VAC20-11, which contains the board's public participation guidelines.

V.A.R. Doc. No. R13-3336; Filed August 20, 2012, 1:19 p.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **3VAC5-70. Other Provisions (adding 3VAC5-70-240).**

Statutory Authority: §§ 4.1-103, 4.1-111, and 4.1-227 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 10, 2012.

Effective Date: November 4, 2012.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Basis: Section 4.1-209.1 F of the Code of Virginia provides that "the Board shall develop regulations pursuant to which fulfillment warehouses may apply for approval to provide storage, packaging, and shipping services to holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the fulfillment warehouse to demonstrate that it is appropriately licensed for the services to be provided by the state in which its place of business is located, (ii) the Board-approved fulfillment warehouse to maintain such records and to submit to the Board such information as the Board may prescribe, and (iii) the fulfillment warehouse and each wine or beer shipper licensed under this section to whom services are provided to enter into a contract designating the fulfillment warehouse as the agent of the shipper for purposes of complying with the provisions of this section."

Section 4.1-209.1 G of the Code of Virginia provides that "the Board shall develop regulations pursuant to which marketing portals may apply for approval to provide marketing services to holders of licenses issued pursuant to

this section. Such regulations shall include provisions that require (i) the marketing portal to demonstrate that it is appropriately organized as an agricultural cooperative association and licensed for the services to be provided by the state in which its place of business is located, (ii) the Board-approved marketing portal to maintain such records and to submit to the Board such information as the Board may prescribe, and (iii) the marketing portal and each wine or beer shipper licensed under this section to whom services are provided to enter into a contract designating the marketing portal as the agent of the shipper for purposes of complying with the provisions of this section."

Purpose: Since 2003, Virginia has allowed the direct shipment of limited quantities of wine and beer to consumers in the Commonwealth by licensed shippers. These shippers have indicated a desire to use third-party service providers to facilitate such sales and shipments to consumers. "Marketing portals" are third-party companies that solicit and accept orders for alcoholic beverages and accept and process payment for such orders. For example, a marketing portal might be a website that allows consumers to place orders for wine. The website operator forwards the order and payment to the winery, which ships the product to the consumer under its shipper's license. "Fulfillment warehouses" are third-party facilities that provide logistic services to producers. They warehouse the winery's product and provide picking, packing, and shipping services at the winery's direction. Amendments to §§ 4.1-209 and 4.1-209.1 of the Code of Virginia adopted by the 2010 General Assembly make such arrangements legal in Virginia and require this regulatory action. This regulation, coupled with the existing regulation of direct shippers, is necessary to protect the health, safety, and welfare of citizens, to ensure that only licensed shippers are shipping approved products on which the appropriate taxes have been paid.

Rationale for Using Fast-Track Process: This rulemaking is expected to be noncontroversial. It tracks the requirements of the statute, with minimal recordkeeping requirements. The provisions of the proposed regulation impose no more burden than the minimum required by the enabling legislation.

Substance: This action creates a new section providing the procedure for a marketing portal or fulfillment warehouse to apply for approval to provide services to a Virginia-licensed wine or beer shipper. An applicant for approval would be required to establish that it met the minimum statutory requirements. Approved fulfillment warehouses, which ship wine or beer on behalf of a licensed shipper, would be required to maintain records of shipping transactions.

Issues: There are no disadvantages to the public or the Commonwealth. The primary advantage to the public and to the agency is an orderly marketplace in which the legally drinking public is able to obtain the products it desires with reasonable certainty that products are genuine and that appropriate taxes have been paid.

Regulations

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Chapters 317 and 561 of the 2010 Acts of Assembly create fulfillment warehouse licenses which are licenses that authorize agricultural cooperative associations operating in the Commonwealth to solicit and receive orders, and pack or ship wine or beer. In addition, the bill permits the formation of marketing portals which would allow authorized agricultural cooperative associations to solicit and receive orders for wine or beer from individuals located in Virginia through the use of the internet. The marketing portals would function on behalf of wine or beer shipper licensees.

Pursuant to Chapters 317 and 561 of the 2010 Acts of Assembly the Alcoholic Beverage Control Board (Board) proposes to add a new section to these regulations, 3VAC5-70-240, providing the application process for marketing portals or fulfillment warehouses as defined in § 4.1-209.1 of the Code of Virginia to seek approval to provide services to holders of wine or beer shippers license. The new section will require marketing portals to demonstrate that they are appropriately organized as an agricultural cooperative. It will require both marketing portals and fulfillment warehouses to demonstrate that they are licensed by the state in which they are located to provide the intended services. Both will be required to enter into a written contract with the wine or beer shipper to which services are to be rendered, designating the marketing portal or fulfillment warehouse as the agent of the shipper for the purposes of complying with applicable regulations and statutes. Approved fulfillment warehouses will be required to maintain certain shipment records.

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

Estimated Economic Impact. Since 2003, Virginia has allowed the direct shipment of limited quantities of wine and beer to consumers in the Commonwealth by licensed shippers. These shippers have indicated a desire to use third-party service providers to facilitate such sales and shipments to consumers. "Marketing portals" are third-party companies which solicit and accept orders for alcoholic beverages and accept and process payment for such orders. For example, a marketing portal might be a website that allows consumers to place orders for wine. The website operator forwards the order and payment to the winery, which ships the product to the consumer under its shipper's license. "Fulfillment warehouses" are third-party facilities that provide logistic services to producers. They warehouse the winery's product, and provide picking, packing, and shipping services at the winery's direction. Amendments to §§ 4.1-209 and 4.1-209.1 of the Code of Virginia adopted by the 2010 General Assembly make such arrangements legal in Virginia, and require the board's proposed regulatory action. This regulation, coupled with the existing regulation of direct shippers, is necessary to protect the health, safety, and

welfare of citizens, to ensure that only licensed shippers are shipping approved products on which the appropriate taxes have been paid.

The Department of Alcoholic Beverage Control (Department) is not aware of any current marketing portals in Virginia. Since prior to July 1, 2010 such activities have been illegal, and the Department has not been approached by any agricultural cooperative; though the Department has heard that Virginia wineries are considering setting up a cooperative, which might attempt to offer both marketing and warehouse services. The marketing portal would have to show proof of its status as an agricultural coop, since that status is statutorily required to qualify to conduct such business in Virginia, and the warehouse would have to maintain records of shipments (the marketing portal would not, since it never touches the wine). The other requirements would be the same. The use of fulfillment warehouses may allow manufacturers and retailers to reduce expenses by sharing logistical services. The use of marketing portals could increase sales for direct shippers of wine and beer.

Businesses and Entities Affected. The Department anticipates that Virginia wineries will likely set up a cooperative, which might attempt to offer both marketing and warehouse services. The Department is not currently aware of any other entities which are likely to seek fulfillment warehouse licenses.

Localities Particularly Affected. The proposed amendments could affect all localities, but may particularly affect localities with wineries.

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

Effects on the Use and Value of Private Property. The use of fulfillment warehouses may allow manufacturers and retailers to reduce expenses by sharing logistical services. The use of marketing portals could increase sales for direct shippers of wine and beer.

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

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected

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

Agency's Response to Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

This action promulgates a new section, 3VAC5-70-240, providing the application process for marketing portals or fulfillment warehouses, as defined in § 4.1-209.1 of the Code of Virginia, to seek approval to provide services to holders of wine or beer shippers licenses. The new section requires marketing portals to demonstrate that they are appropriately organized as an agricultural cooperative. Both marketing portals and fulfillment warehouses are required to demonstrate that they are licensed by the state in which they are located to provide the intended services. Both are required to enter into a written contract with the wine or beer shipper to which services are to be rendered, designating the marketing portal or fulfillment warehouse as the agent of the shipper for the purposes of complying with applicable regulations and statutes. Approved fulfillment warehouses will be required to maintain certain shipment records.

3VAC5-70-240. Marketing portal and fulfillment warehouse approval process.

A. Any holder of a wine or beer shipper's license wishing to use the services of a marketing portal or fulfillment warehouse, as defined in § 4.1-209.1 of the Code of Virginia, must use an approved marketing portal or fulfillment warehouse. Marketing portals or fulfillment warehouses licensed to perform such services by the state in which they are located may apply for approval to provide such services to holders of Virginia wine or beer shipper's licenses by letter to the Supervisor, Tax Management Section, Virginia Department of Alcoholic Beverage Control, requesting such approval. Each applicant shall submit as attachments copies of all licenses issued by the state in which its place of business is located that authorize the provision of the services

to be provided. A marketing portal shall submit as attachments copies of documents showing that it is properly organized as an agricultural cooperative in the state where it is located. The board may refuse, suspend, or revoke approval if it shall have reasonable cause to believe that a marketing portal or fulfillment warehouse is not licensed to provide such services by its home state, that it has failed to comply with the regulations of the board, or that a cause exists with respect to the marketing portal or fulfillment warehouse that would authorize the board to refuse, suspend, or revoke a license pursuant to § 4.1-100 et seq. of Title 4.1 of the Code of Virginia. Before refusing, suspending, or revoking such approval, the board shall follow the same administrative procedures accorded an applicant or licensee under § 4.1-100 et seq. of Title 4.1 of the Code of Virginia and regulations of the board.

B. Any approved marketing portal or fulfillment warehouse shall, prior to performing services for a wine or beer shipper's licensee, enter into a written contract. The contract must designate the marketing portal or fulfillment warehouse as the agent of the shipper for the purposes of complying with the provisions of this regulation and §§ 4.1-209 and 4.1-209.1 of the Code of Virginia. A copy of each such contract shall be submitted by the marketing portal or fulfillment warehouse to the Supervisor, Tax Management Section, Virginia Department of Alcoholic Beverage Control, prior to the commencement of services.

C. Approved fulfillment warehouses shall maintain for two years complete and accurate records of all shipments made on behalf of Virginia wine or beer shippers, including for each shipment:

1. Number of containers shipped;
2. Volume of each container shipped;
3. Brand of each container shipped; and
4. Names and addresses of recipients.

The records required by this subsection shall be made available for inspection and copying by any member of the board or its special agents upon request.

VA.R. Doc. No. R13-2493; Filed August 21, 2012, 2:02 p.m.



TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Forms

Title of Regulation: 9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, email melissa.porterfield@deq.virginia.gov.

Regulations

NOTICE: Forms used in administering the following regulation have been filed by the Department of Environmental Quality. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. 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 (9VAC20-90)

[Solid Waste Information and Assessment Program - Reporting Table, DEQ Form 50-25 \(rev. 12/11\).](#)

[Instructions for Completing Form DEQ 50-25 \(rev. 12/11\).](#)

~~[Solid Waste Annual Permit Fee Quarter Payment Form PF001 \(rev. 7/11\).](#)~~

[Solid Waste Annual Fee Quarter Payment Form PF001 \(rev. 8/12\).](#)

VA.R. Doc. No. R13-3362; Filed August 20, 2012, 11:48 a.m.

STATE WATER CONTROL BOARD

Forms

Title of Regulation: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.**

Contact Information: Debra A. Miller, Policy Planning Specialist, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4209, FAX (804) 698-4346, or email debra.miller@deq.virginia.gov.

NOTICE: Forms used in administering the following regulation have been filed by the State Water Control Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. 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 (9VAC25-31)

[VPDES Sewage Sludge Permit Application Form \(rev. 2000\).](#)

[VPDES Sewage Sludge Permit Application for Permit Reissuance \(eff. 8/12\).](#)

[Instructions for VPDES Sewage Sludge Permit Application Form \(rev. 2000\).](#)

[Application Form 1 - General Information, Consolidated Permits Program, EPA Form 3510-1 \(rev. 8/90\).](#)

[Virginia State Water Control Board Fish Farm Questionnaire \(rev. 4/11\).](#)

[Application Form 2A - NPDES Form 2A Application for Permit to Discharge Municipal Wastewater, EPA Form 3510-2A \(eff. 1/99\).](#)

[Form 2B NPDES, Applications for Permit to Discharge Wastewater Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities, EPA Form 3510-2B \(rev. 11/08\).](#)

[Application Form 2C - Wastewater Discharge Information, Consolidated Permits Program, EPA Form 3510-2C \(rev. 8/90\).](#)

[Application Form 2D - New Sources and New Dischargers: Application for Permit to Discharge Process Wastewater, EPA Form 3510-2D \(rev. 8/90\).](#)

[Application Form 2E - Facilities Which Do Not Discharge Process Wastewater, EPA Form 3510-2E \(rev. 8/90\).](#)

[Form 2F NPDES, Application for Permit to Discharge Stormwater, Discharges Associated with Industrial Activity, EPA Form 3510-2F \(rev. 1/92\).](#)

[Local Government Ordinance Form \(eff. 2000\).](#)

[Local Government Certification Form for New Municipal Solid Waste Landfill Permits \(eff. 2006\).](#)

VA.R. Doc. No. R13-3378; Filed August 21, 2012, 12:10 p.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

Title of Regulation: **12VAC5-31. Virginia Emergency Medical Services Regulations (amending 12VAC5-31-10, 12VAC5-31-20, 12VAC5-31-50, 12VAC5-31-60, 12VAC5-31-80, 12VAC5-31-90, 12VAC5-31-100, 12VAC5-31-120, 12VAC5-31-160, 12VAC5-31-170, 12VAC5-31-180, 12VAC5-31-200 through 12VAC5-31-240, 12VAC5-31-290, 12VAC5-31-330, 12VAC5-31-370 through 12VAC5-31-400, 12VAC5-31-420, 12VAC5-31-430, 12VAC5-31-460, 12VAC5-31-480, 12VAC5-31-500 through 12VAC5-31-540, 12VAC5-31-560, 12VAC5-31-570, 12VAC5-31-590, 12VAC5-31-650, 12VAC5-31-700, 12VAC5-31-710, 12VAC5-31-750, 12VAC5-31-760, 12VAC5-31-770, 12VAC5-31-790, 12VAC5-31-800 through 12VAC5-31-830, 12VAC5-31-860 through 12VAC5-31-910, 12VAC5-31-950, 12VAC5-31-960, 12VAC5-31-1010, 12VAC5-31-1030, 12VAC5-31-1040, 12VAC5-31-1140, 12VAC5-31-1210, 12VAC5-31-1250, 12VAC5-31-1260, 12VAC5-31-1270, 12VAC5-31-1810 through 12VAC5-31-1860, 12VAC5-31-1880, 12VAC5-31-1890, 12VAC5-31-1950, 12VAC5-31-2330, 12VAC5-31-2570, 12VAC5-31-2740; adding 12VAC5-31-610, 12VAC5-31-875, 12VAC5-31-885, 12VAC5-31-940, 12VAC5-31-970, 12VAC5-31-1050, 12VAC5-31-1165, 12VAC5-31-1305 through 12VAC5-31-1615; repealing 12VAC5-31-840, 12VAC5-31-1060, 12VAC5-31-1280, 12VAC5-31-1290, 12VAC5-31-1300, 12VAC5-31-1310 through 12VAC5-31-1710).**

Statutory Authority: § 32.1-111.4 of the Code of Virginia.

Effective Date: October 10, 2012.

Agency Contact: Michael Berg, Regulatory and Compliance Manager, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7615, or email michael.berg@vdh.virginia.gov.

Summary:

The provision of emergency medical services (EMS) is a dynamic process that continually changes due to advances in science, technology, legislation, federal mandates, evidence-based practices, and other factors. The proposed revisions incorporate changes in terminology, testing practices, enforcement, agency responsibilities, certification levels, reporting requirements, and training and EMS physician requirements. Additional proposed changes include adding civil penalties to the enforcement provisions, allowing localities to develop their own emergency response agency standards, requiring a National Crime Information Center background check on affiliated EMS personnel, increasing the required supply count of triage tags, and removing the prohibition on firearms, weapons, and explosives.

Changes from the proposed stage to the final stage of the regulation (i) incorporate changes in terminology to align with the National Scope of Practice terminology, the Code of Virginia, and new national levels of certification; (ii) combine two distinct instructional levels into one standard educational instructional level; (iv) add the ability to determine if an agency applicant is a benefit or has a direct impact on the delivery of EMS, and (iv) remove duplicative language.

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

Part I
General Provisions

Article 1
Definitions

12VAC5-31-10. Definitions.

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

"Abandonment" means the termination of a health care provider-patient relationship without assurance that an equal or higher level of care meeting the assessed needs of the patient's condition is present and available.

"Accreditation" means approval granted to an entity by the Office of Emergency Medical Services (EMS) after the institution has met specific requirements enabling the institution to conduct basic or advanced life support training

and education programs. There are four levels of accreditation: interim, provisional, full, and probationary.

"Accreditation cycle" means the term or cycle at the conclusion of which accreditation expires unless a full self-study is performed. Accreditation cycles are typically quinquennial (five-year) but these terms may be shorter, triennial (three-year) or biennial (two-year), if the Office of EMS deems it necessary.

"Accreditation date" means the date of the accreditation decision that is awarded to an entity following its full site visit and review.

"Accreditation decision" means the conclusion reached about an entity status after evaluation of the results of the onsite survey, recommendations of the site review team, and any other relevant information such as documentation of compliance with standards, documentation of plans to correct deficiencies, or evidence of recent improvements.

"Accreditation denied" means an accreditation decision that results when an entity has been denied accreditation. This accreditation decision becomes effective only when all available appeal procedures have been exhausted.

"Acute" means a medical condition having a rapid onset and a short duration.

"Acute care hospital" means any hospital that provides emergency medical services on a 24-hour basis.

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

"Advanced life support" or "ALS" means the ~~application provision of care~~ by EMS personnel ~~of invasive and noninvasive medical procedures or the administration of medications that is authorized by the Office of Emergency Medical Services, or both~~ who are certified as an Emergency Medical Technician (EMT) - Enhanced, Advanced EMT, [~~EMT-Intermediate Intermediate,~~] or [~~EMT-Paramedic Paramedic~~] or equivalent as approved by the Board of Health.

Advanced life support in the air medical environment is a mission generally defined as the transport of a patient who receives care during a transport that includes an invasive medical procedure or the administration of medications, including IV infusions, in addition to any noninvasive care that is authorized by the Office of EMS.

"Advanced life support certification course" means a training program that allows a student to become eligible for a new ALS certification level. Programs must meet the educational requirements established by the Office of EMS as defined by the respective advanced life support curriculum. Initial certification courses include:

1. Emergency Medical Technician-Enhanced;
2. Advanced EMT;
3. Advanced EMT to [~~EMT-Paramedic Intermediate~~] Bridge;

Regulations

2. ~~4.~~ EMT-Enhanced to [~~EMT Intermediate~~ Intermediate] Bridge;

3. ~~5.~~ [~~Emergency Medical Technician Intermediate~~ Intermediate];

4. ~~6.~~ [~~EMT Intermediate~~ Intermediate] to [~~EMT Paramedic~~ Paramedic] Bridge;

5. ~~7.~~ [~~Emergency Medical Technician Paramedic~~ Paramedic];

6. ~~8.~~ Registered Nurse to [~~EMT Paramedic~~ Paramedic] Bridge; and

7. ~~9.~~ Other programs approved by the Office of EMS.

"Advanced life support (ALS) coordinator" means a person who has met the criteria established by the Office of EMS to assume responsibility for conducting ALS training programs.

"Advanced life support transport" means the transportation of a patient who is receiving ALS level care.

"Affiliated" means a person who is employed by or a member of an EMS agency.

"Air medical specialist" means a person trained in the concept of flight physiology and the effects of flight on patients through documented completion of a program approved by the Office of EMS. This training must include but is not limited to aerodynamics, weather, communications, safety around aircraft/ambulances, scene safety, landing zone operations, flight physiology, equipment/aircraft familiarization, basic flight navigation, flight documentation, and survival training specific to service area.

"Ambulance" means (as defined by § 32.1-111.1 of the Code of Virginia) any vehicle, vessel or craft that holds a valid permit issued by the Office of EMS and that is specially constructed, equipped, maintained and operated, and intended to be used for emergency medical care and the transportation of patients who are sick, injured, wounded, or otherwise incapacitated or helpless. The word "ambulance" may not appear on any vehicle, vessel or aircraft that does not hold a valid EMS vehicle permit.

"Approved locking device" means a mechanism that prevents removal or opening of a ~~medication~~ drug kit by means other than securing the ~~medication~~ drug kit by the handle only.

"Assistant director" means the Assistant Director of the Office of Emergency Medical Services.

"Attendant-in-charge" or "AIC" means the certified or licensed person who is qualified and designated to be primarily responsible for the provision of emergency medical care.

"Attendant" means a certified or licensed person qualified to assist in the provision of emergency medical care.

"Basic life support" or "BLS" means the application provision of care by EMS personnel of ~~invasive and noninvasive medical procedures or administration of medications~~ that is authorized by the Office of EMS who are

certified as First Responder, Emergency Medical Responder (EMR), or Emergency Medical Technician or equivalent as approved by the Board of Health.

Basic life support in the air medical environment means a mission generally defined as the transport of a patient who receives care during a transport that is commensurate with the scope of practice of an EMT. In the Commonwealth of Virginia care that is provided in the air medical environment must be assumed at a minimum by a Virginia certified [~~EMT Paramedic~~ Paramedic] who is a part of the regular air medical crew. (fixed wing excluded)

"BLS certification course" means a training program that allows a student to become eligible for a new BLS certification level. Programs must meet the educational requirements established by the Office of EMS as defined by the respective basic life support curriculum. Initial certification courses include:

1. EMS First Responder;
2. EMS First Responder Bridge to EMT;
3. Emergency Medical Responder;
4. Emergency Medical Responder Bridge to EMT;
- ~~3.~~ 5. Emergency Medical Technician; and
4. 6. Other programs approved by the Office of EMS.

"Board" or "state board" means the State Board of Health.

~~"Bypass" means to transport a patient past a commonly used medical care facility to another hospital for accessing a more readily available or appropriate level of medical care.~~

["Candidate" means any person who is enrolled in or is taking a course leading toward initial certification.]

"Candidate status" means the status awarded to a program that has made application to the Office of EMS for accreditation but that is not yet accredited.

"CDC" means the United States Centers for Disease Control and Prevention.

"Certification" means a credential issued by the Office of EMS for a specified period of time to a person who has successfully completed an approved training program.

"Certification candidate" means a person seeking EMS certification from the Office of EMS.

"Certification candidate status" means any candidate or provider who becomes eligible for certification testing but who has not yet taken the certification test using that eligibility.

"Certification examiner" means an individual designated by the Office of EMS to administer a state certification examination.

"Certification transfer" means the issuance of certification through reciprocity, legal recognition, challenge or equivalency based on prior training, certification or licensure.

"Chief executive officer" means the person authorized or designated by the agency or service as the highest in administrative rank or authority.

~~"Chief operations officer" means the person authorized or designated by the agency or service as the highest operational officer.~~

"Commercial mobile radio service" or "CMRS" as defined in §§ 3 (27) and 332 (d) of the Federal Telecommunications Act of 1996, 47 USC § 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, 107 USC § 312. It includes the term "wireless" and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service or personal communications service (e.g., cellular telephone, 800/900 MHz Specialized Mobile Radio, Personal Communications Service, etc.).

"Commissioner" means the State Health Commissioner, the commissioner's duly authorized representative, or in the event of the commissioner's absence or a vacancy in the office of State Health Commissioner, the Acting Commissioner or Deputy Commissioner.

"Continuing education" or "CE" means an instructional program that enhances a particular area of knowledge or skills beyond compulsory or required initial training.

"Course" means a basic or advanced life support training program leading to certification or award of continuing education credit hours.

["Course coordinator" means the person identified on the course approval request as the coordinator who is responsible with the physician course director for all aspects of the program including but not limited to assuring adherence to the rules and regulations, office policies, and any contract components.]

"Critical care" or "CC" in the air medical environment is a mission defined as an interfacility transport of a critically ill or injured patient whose condition warrants care commensurate with the scope of practice of a physician or registered nurse.

"Critical criteria" means an identified essential element of a state practical certification examination that must be properly performed to successfully pass the station.

"Defibrillation" means the discharge of an electrical current through a patient's heart for the purpose of restoring a perfusing cardiac rhythm. For the purpose of these regulations, defibrillation includes cardioversion.

"Defibrillator -- automated external" or "AED" means an automatic or semi-automatic device, or both, capable of rhythm analysis and defibrillation after electronically detecting the presence of ventricular fibrillation and ventricular tachycardia, approved by the United States Food and Drug Administration.

~~"Defibrillator combination unit" means a single device designed to incorporate all of the required capabilities of both~~

~~an Automated External Defibrillator and a Manual Defibrillator.~~

"Defibrillator -- manual" means a monitor/defibrillator that has no capability for rhythm analysis and will charge and deliver a shock only at the command of the operator. For the purpose of compliance with these regulations, a manual defibrillator must be capable of synchronized cardioversion and noninvasive external pacing. A manual defibrillator must be approved by the United States Food and Drug Administration.

"Designated infection control officer" means a liaison between the medical facility treating the source patient and the exposed employee. This person has been formally trained for this position and is knowledgeable in proper post exposure medical follow up procedures and current regulations and laws governing disease transmission.

"Designated emergency response agency" means an EMS agency recognized by an ordinance or a resolution of the governing body of any county, city or town as an integral part of the official public safety program of the county, city or town with a responsibility for providing emergency medical response.

"Director" means the Director of the Office of Emergency Medical Services.

"Diversion" means a change in the normal or established pattern of patient transport at the direction of a medical care facility.

"Emergency medical services" or "EMS" means the services used in responding to an individual's perceived needs for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury including any or all of the services that could be described as first response, basic life support, advanced life support, neonatal life support, communications, training and medical control.

"EMS Advisory Board" means the Emergency Medical Services Advisory Board as appointed by the Governor.

"EMS education coordinator" means any EMS provider, registered nurse, physician assistant, doctor of osteopathic medicine, or doctor of medicine who possesses Virginia certification as an EMS education coordinator. Such certification does not confer authorization to practice EMS.

"Emergency medical services agency" or "EMS agency" means a person licensed by the Office of EMS to engage in the business, service, or regular activity, whether or not for profit, of transporting or rendering immediate medical care to persons who are sick, injured, or otherwise incapacitated.

"EMS agency status report" means a report submitted on forms specified by the Office of EMS that documents the operational capabilities of an EMS agency including data on personnel, vehicles and other related resources.

~~"Emergency medical services communications plan" or "EMS communications plan" means the state plan for the~~

Regulations

~~coordination of electronic telecommunications by EMS agencies as approved by the Office of EMS.~~

"Emergency medical services personnel" or "EMS personnel" means a person, affiliated with an EMS agency, responsible for the provision of emergency medical services including any or all persons who could be described as an attendant, attendant-in-charge, operator or operational medical director.

"Emergency medical services physician" or "EMS physician" means a physician who holds current endorsement from the Office of EMS and may serve as an EMS agency operational medical director or training program physician course director.

"Emergency medical services provider" or "EMS provider" means a person who holds a valid certification issued by the Office of EMS.

"Emergency medical services system" or "EMS system" means a system that provides for the arrangement of personnel, facilities, equipment, and other system components for the effective and coordinated delivery of emergency medical services in an appropriate geographical area that may be local, regional, state or national.

"Emergency medical services vehicle" or "EMS vehicle" means any vehicle, vessel, aircraft, or ambulance that holds a valid emergency medical services vehicle permit issued by the Office of EMS that is equipped, maintained or operated to provide emergency medical care or transportation of patients who are sick, injured, wounded, or otherwise incapacitated or helpless.

"Emergency medical services vehicle permit" means an authorization issued by the Office of EMS for any vehicle, vessel or aircraft meeting the standards and criteria established by regulation for emergency medical services vehicles.

"Emergency medical technician instructor" means an EMS provider who holds a valid certification issued by the Office of EMS to announce and coordinate BLS programs.

~~"Emergency operations plan" means the Commonwealth of Virginia Emergency Operations Plan.~~

"Emergency vehicle operator's course" or "EVO" means an approved course of instruction for EMS vehicle operators that includes safe driving skills, knowledge of the state motor vehicle code affecting emergency vehicles, and driving skills necessary for operation of emergency vehicles during response to an incident or transport of a patient to a health care facility. This course must include classroom and driving range skill instruction. An approved course of instruction includes the course objectives as identified within the U.S. Department of Transportation Emergency Vehicle Operator curriculum or as approved by OEMS.

"Exam series" means a sequence of opportunities to complete a certification examination with any allowed retest.

"FAA" means the U.S. Federal Aviation Administration.

["FAR" means Federal Aviation Regulations.]

"FCC" means the U.S. Federal Communications Commission.

"Financial Assistance Review Committee" or "FARC" means the committee appointed by the EMS Advisory Board to administer the Rescue Squad Assistance Fund.

"Full accreditation" means an accreditation decision awarded to an entity that demonstrates satisfactory compliance with applicable Virginia standards in all performance areas.

"Fund" means the Virginia Rescue Squad Assistance Fund.

~~"Grant administrator" means the Office of EMS personnel directly responsible for administration of the Rescue Squad Assistance Fund program.~~

"Institutional self study" means a document whereby training programs seeking accreditation answer questions about their program for the purpose of determining their level of preparation to conduct initial EMS training programs.

"Instructor" means the teacher for a specific class or lesson of an EMS training program.

"Instructor aide" means providers certified at or above the level of instruction.

"Interfacility transport" in the air medical environment means as a mission for whom an admitted patient (or patients) was transported from a hospital or care giving facility (clinic, nursing home, etc) to a receiving facility or airport.

"Interim accreditation" means an accreditation decision that results when a previously unaccredited EMS entity has been granted approval to operate one training program, for a period not to exceed 120 days, during which its application is being considered and before a provisional or full accreditation is issued, providing the following conditions are satisfied: (i) a complete application for accreditation is received by the Office of EMS and (ii) a complete institutional self study is submitted to the Office of EMS. Students attending a program with interim accreditation will not be eligible to sit for state testing until the entity achieves official notification of accreditation at the provisional or full level.

"Invasive procedure" means a medical procedure that involves entry into the living body, as by incision or by insertion of an instrument.

"License" means an authorization issued by the Office of EMS to provide emergency medical services in the state as an EMS agency.

"Local EMS resource" means a person recognized by the Office of EMS to perform specified functions for a designated geographic area. This person may be designated to perform one or more of the functions otherwise provided by regional EMS councils.

"Local EMS response plan" means a written document that details the primary service area [~~the unit mobilization interval~~] and responding interval standards as approved by

the local government, and the operational medical director and the Office of EMS.

"Local governing body" or "governing body" means members of the governing body of a city, county, or town in the Commonwealth who are elected to that position or their designee.

"Major medical emergency" means an emergency that cannot be managed through the use of locally available emergency medical resources and that requires implementation of special procedures to ensure the best outcome for the greatest number of patients as determined by the EMS provider in charge or incident commander on the scene. This event includes local emergencies declared by the locality's government and states of emergency declared by the Governor.

["~~Medic" means an EMS provider certified at the level of] EMT-Cardiac [Advanced EMT, EMT Intermediate or EMT-Paramedic.]~~

"Medical care facility" means (as defined by ~~§ 32.1-123 § 32.1-102.1~~ of the Code of Virginia) any institution, place, building or agency, whether licensed or required to be licensed by the board or the [~~State~~] ~~Mental Health, Mental Retardation and Substance Abuse Services [Board Department]~~ of Behavioral Health and Developmental Services, whether operated for profit or nonprofit and whether privately owned or privately operated or owned or operated by a local governmental unit, by or in which health services are furnished, conducted, operated or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical.

~~"Medical community" means the physicians and allied healthcare specialists located and available within a definable geographic area.~~

"Medical control" means the direction and advice provided through a communications device (on-line) to on-site and in-transit EMS personnel from a designated medical care facility staffed by appropriate personnel and operating under physician supervision.

"Medical direction" means the direction and supervision of EMS personnel by the Operational Medical Director of the EMS agency with which he is affiliated.

"Medical emergency" means the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

"Medical practitioner" means a physician, dentist, podiatrist, licensed nurse practitioner, licensed physician's assistant, or other person licensed, registered or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to, a controlled substance in the course of professional practice or research in this Commonwealth.

~~"Medical protocol" means preestablished written physician authorized procedures or guidelines for medical care of a specified clinical situation based on patient presentation.~~

"Mutual aid agreement" means a written document specifying a formal understanding to lend aid to an EMS agency.

~~"Neonatal life support" means a sophisticated and specialized level of out of hospital and interfacility emergency and stabilizing care that includes basic and advanced life support functions for the newborn or infant patient.~~

"Neonatal" or "neonate" means, for the purpose of interfacility transportation, any infant who is deemed a newborn within a hospital, has not been discharged since the birthing process, and is currently receiving medical care under a physician.

"Nonprofit" means without the intention of financial gain, advantage, or benefit as defined by federal tax law.

"OSHA" means the U.S. Occupational Safety and Health Administration or Virginia Occupational Safety and Health, the state agency designated to perform its functions in Virginia.

"Office of EMS" means the Office of Emergency Medical Services within the Virginia Department of Health.

"Operational medical director" or "OMD" means an EMS physician, currently licensed to practice medicine or osteopathic medicine in the Commonwealth, who is formally recognized and responsible for providing medical direction, oversight and quality improvement to an EMS agency and personnel.

"Operator" means a person qualified and designated to drive or pilot a specified class of permitted EMS vehicle.

"Patient" means a person who needs immediate medical attention or transport, or both, whose physical or mental condition is such that he is in danger of loss of life or health impairment, or who may be incapacitated or helpless as a result of physical or mental condition or a person who requires medical attention during transport from one medical care facility to another.

"Person" means (as defined in the Code of Virginia) any person, firm, partnership, association, corporation, company, or group of individuals acting together for a common purpose or organization of any kind, including any government agency other than an agency of the United States government.

Regulations

"Physician" means an individual who holds a valid, unrestricted license to practice medicine or osteopathy in the Commonwealth.

"Physician assistant" means an individual who holds a valid, unrestricted license to practice as a Physician Assistant in the Commonwealth.

"Physician course director" or "PCD" means an EMS physician who is responsible for the clinical aspects of emergency medical care training programs, including the clinical and field actions of enrolled students.

"Prehospital patient care report" or "PPCR" means a document used to summarize the facts and events of an EMS incident and includes, but is not limited to, the type of medical emergency or nature of the call, the response time, the treatment provided and other minimum data items as prescribed by the board. "PPCR" includes any supplements, addenda, or other related attachments that document patient information or care provided.

~~Prehospital patient data report" or "PPDR" means a document designed to be optically scanned that may be used to report to the Office of EMS, the minimum patient care data items as prescribed by the board.~~

"Prehospital scene" means, in the air medical environment, the direct response to the scene of incident or injury, such as a roadway, etc.

["Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.]

"Primary retest status" means any candidate or provider who failed his primary certification attempt. Primary retest status expires 90 days after the primary test date.

"Primary service area" means the specific geographic area designated or prescribed by a locality (county, city or town) in which an EMS agency provides prehospital emergency medical care or transportation. This designated or prescribed geographic area served must include all locations for which the EMS agency is principally dispatched (i.e., first due response agency).

"Private Mobile Radio Service" or "PMRS" as defined in § 20.3 of the Federal Communications Commission's Rules, 47 CFR 20.3. (For purposes of this definition, PMRS includes "industrial" and "public safety" radio services authorized under Part 90 of the Federal Communications Commission's Rules, 47 CFR 90.1 et seq., with the exception of certain for-profit commercial paging services and 800/900 MHz Specialized Mobile Radio Services that are interconnected to the public switched telephone network and are therefore classified as CMRS.)

"Probationary status" means the Office of EMS will place an institution on publicly disclosed probation when it has not completed a timely, thorough, and credible root cause analysis and action plan of any sentinel event occurring there. When the entity completes an acceptable root cause analysis

and develops an acceptable action plan, the Office of EMS will remove the probation designation from the entity's accreditation status.

~~"Program site accreditation" means the verification that a training program has demonstrated the ability to meet criteria established by the Office of EMS to conduct basic or advanced life support certification courses.~~

"Provisional accreditation" means an accreditation decision that results when a previously unaccredited entity has demonstrated satisfactory compliance with a subset of standards during a preliminary on-site evaluation. This decision remains in effect for a period not to exceed 365 days, until one of the other official accreditation decision categories is assigned based upon an a follow-up site visit against all applicable standards.

"Public safety answering point" or "PSAP" means a facility equipped and staffed on a 24-hour basis to receive requests for emergency medical assistance for one or more EMS agencies.

"Quality management program" or "QM" means the continuous study of and improvement of an EMS agency or system including the collection of data, the identification of deficiencies through continuous evaluation, the education of personnel and the establishment of goals, policies and programs that improve patient outcomes in EMS systems.

"Reaccreditation date" means the date of the reaccreditation decision that is awarded to an entity following a full site visit and review.

"Recertification" means the process used by certified EMS personnel to maintain their training certifications.

"Reentry" means the process by which EMS personnel may regain a training certification that has lapsed within the last two years.

"Reentry status" means any candidate or provider whose certification has lapsed within the last two years.

"Regional EMS council" means an organization designated by the board that is authorized to receive and disburse public funds in compliance with established performance standards and whose function is to plan, develop, maintain, expand and improve an efficient and effective regional emergency medical services system within a designated geographical area pursuant to § 32.1-111.11 of the Code of Virginia.

"Regional trauma triage plan" means a formal written plan developed by a regional EMS council or local EMS resource and approved by the commissioner that incorporates the region's geographic variations, trauma care capabilities and resources for the triage of trauma patients pursuant to § 32.1-111.3 of the Code of Virginia.

~~"Registered nurse" means an individual who holds a valid, unrestricted license to practice as a registered nurse in the Commonwealth~~ a person who is licensed or holds a multistate privilege under the provisions of Chapter 30 (§ 54.1-3000 et

seq.) of Title 54.1 of the Code of Virginia to practice professional nursing.

"Regulated medical device" means equipment or other items that may only be purchased or possessed upon the approval of a physician and that the manufacture or sale of which is regulated by the U.S. Food and Drug Administration (FDA).

"Regulated waste" means liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or potentially infectious materials and are capable of releasing these materials during handling; items dripping with liquid product; contaminated sharps; pathological and microbiological waste containing blood or other potentially infectious materials.

"Regulations" means (as defined in the Code of Virginia) any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an authorized board or agency.

"Rescue" means a service that may include the search for lost persons, gaining access to persons trapped, extrication of persons from potentially dangerous situations and the rendering of other assistance to such persons.

"Rescue vehicle" means a vehicle, vessel or aircraft that is maintained and operated to assist with the location and removal of victims from a hazardous or life-threatening situation to areas of safety or treatment.

"Responding ~~interval time~~" means the elapsed time in minutes between the "dispatch" time and the "arrive scene" time (i.e., when the wheels of the EMS vehicle stop) time a call for emergency medical services is received by the PSAP until the appropriate emergency medical response unit arrives on the scene.

"Responding ~~interval time~~ standard" means a time standard in minutes ~~for the responding interval~~, established by the EMS agency, the locality and OMD, in which the EMS agency will comply with 90% or greater reliability.

"Response obligation to locality" means a requirement of a designated emergency response agency to lend aid to all other designated emergency response agencies within the locality or localities in which the EMS agency is based.

"Revocation" means the permanent removal of an EMS agency license, vehicle permit, training certification, ALS coordinator endorsement, EMS education coordinator, EMS physician endorsement or any other designation issued by the Office of EMS.

"Safety apparel" means personal protective safety clothing that is intended to provide conspicuity during both daytime and nighttime usage and that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2010 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear."

"Secondary certification status" means any candidate or provider who is no longer in primary retest status.

"Secondary retest status" means any candidate or provider who failed their secondary certification attempt. Secondary retest status expires 90 days after the secondary test date.

"Sentinel event" means any significant occurrence, action, or change in the operational status of the entity from the time when it either applied for candidate status or was accredited. The change in status can be based on but not limited to one or all of the events indicated below:

Entering into an agreement of sale of an accredited entity or an accreditation candidate.

Entering into an agreement to purchase or otherwise directly or indirectly acquire an accredited entity or accreditation candidate.

Financial impairment of an accredited entity or candidate for accreditation, which affects its operational performance or entity control.

Insolvency or bankruptcy filing.

Change in ownership or control greater than 25%.

Disruption of service to student body.

Discontinuance of classes or business operations.

Failure to report a change in program personnel, location, change in training level or Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions (CoAEMSP) accreditation status.

Failure to meet minimum examination scores as established by the Office of EMS.

Loss of CoAEMSP or [CAAHEEP Commission on Accreditation of Allied Health Education Programs (CAAHEP)] accreditation.

Company fine or fines of greater than \$100,000 for regulatory violation, marketing or advertising practices, antitrust, or tax disputes.

"Special conditions" means a notation placed upon an EMS agency or registration, variance or exemption documents that modifies or restricts specific requirements of these regulations.

"Specialized air medical training" means a course of instruction and continuing education in the concept of flight physiology and the effects of flight on patients that has been approved by the Office of EMS. This training must include but is not limited to aerodynamics, weather, communications, safety around aircraft/ambulances, scene safety, landing zone operations, flight physiology, equipment/aircraft familiarization, basic flight navigation, flight documentation, and survival training specific to service area.

"Specialty care mission" in the air medical environment means the transport of a patient requiring specialty patient care by one or more medical professionals who are added to the regularly scheduled medical transport team.

Regulations

"Specialty care provider" in the air medical environment means a provider of specialized medical care, to include but not limited to neonatal, pediatric, and perinatal.

"Standard of care" means the established approach to the provision of basic and advanced medical care that is considered appropriate, prudent and in the best interests of patients within a geographic area as derived by consensus among the physicians responsible for the delivery and oversight of that care. The standard of care is dynamic with changes reflective of knowledge gained by research and practice.

"Standard operating procedure" or "SOP" means preestablished written agency authorized procedures and guidelines for activities performed by affiliated EMS agency.

"Supplemented transport" means an interfacility transport for which the sending physician has determined that the medically necessary care and equipment needs of a critically injured or ill patient is beyond the scope of practice of the available EMS personnel of the EMS agency.

"Suspension" means the temporary removal of an EMS agency license, vehicle permit, training certification, ALS coordinator endorsement, EMS education coordinator, EMS physician endorsement or any other designation issued by the Office of EMS.

"Test site coordinator" means an individual designated by the Office of EMS to coordinate the logistics of a state certification examination site.

"Training officer" means an individual who is responsible for the maintenance and completion of agency personnel training records and who acts as a liaison between the agency, the operational medical director, and a participant in the agency and regional quality assurance process.

"Trauma center" means a specialized hospital facility distinguished by the immediate availability of specialized surgeons, physician specialists, anesthesiologists, nurses, and resuscitation and life support equipment on a 24-hour basis to care for severely injured patients or those at risk for severe injury. In Virginia, trauma centers are designated by the Virginia Department of Health as Level I, II or III.

"Trauma center designation" means the formal recognition by the board of a hospital as a provider of specialized services to meet the needs of the severely injured patient. This usually involves a contractual relationship based on adherence to standards.

"Triage" means the process of sorting patients to establish treatment and transportation priorities according to severity of injury and medical need.

~~"Unit mobilization interval" means the elapsed time (in minutes) between the "dispatched" time of the EMS agency and the "responding" time (the wheels of the EMS vehicle start moving).~~

~~"Unit mobilization interval standard" means a time standard (in minutes) for the unit mobilization interval, established by~~

~~a designated emergency response agency, the locality and OMD, in which the EMS agency will comply.~~

"USDOT" means the United States Department of Transportation.

"Vehicle operating weight" means the combined weight of the vehicle, vessel or craft, a full complement of fuel, and all required and optional equipment and supplies.

"Virginia Statewide Trauma Registry" or "Trauma Registry" means a collection of data on patients who receive hospital care for certain types of injuries. The collection and analysis of such data is primarily intended to evaluate the quality of trauma care and outcomes in individual institutions and trauma systems. The secondary purpose is to provide useful information for the surveillance of injury morbidity and mortality.

~~"Wheelchair" means a chair with wheels specifically designed and approved for the vehicular transportation of a person in an upright, seated (Fowler's) position.~~

Article 2

Purpose and Applicability

12VAC5-31-20. Responsibility for regulations; application of regulations.

A. These regulations shall be administered by the following:

1. State Board of Health. The Board of Health has the responsibility to promulgate, amend, and repeal, as appropriate, regulations for the provision of emergency medical services per Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia.
2. State Health Commissioner. The commissioner, as executive officer of the board, will administer these regulations per § 32.1-16 of the Code of Virginia.
3. The Virginia Office of EMS. The director, assistant director and specified staff positions will have designee privileges for the purpose of enforcing these regulations.
4. Emergency Medical Services Advisory Board. The EMS Advisory Board has the responsibility to review and advise the board regarding EMS policies and programs.

B. These regulations have general application throughout Virginia to include:

1. No person may establish, operate, maintain, advertise or represent themselves, any service or any organization as an EMS agency or as EMS personnel without a valid license or certification, or in violation of the terms of a valid license or certification issued by the Office of EMS.
2. A person providing EMS to a patient received within Virginia [~~and whether treated and released or~~] transported to a location within Virginia must comply with these regulations unless exempted in these regulations.

12VAC5-31-50. Variances.

A. The ~~Office of EMS~~ commissioner is authorized to grant variances for any part or all of these regulations in accordance

with the procedures set forth herein. A variance permits temporary specified exceptions to these regulations. An applicant, licensee, or permit or certificate holder may file a written request for a variance with the Office of EMS on specified forms. If the applicant, licensee, or permit or certificate holder is an EMS agency, the following additional requirements apply:

1. The written variance request shall be submitted for review and recommendations to the governing body or chief administrative officer of the jurisdiction in which the principal office of the EMS agency is located prior to submission to the Office of EMS.
2. An EMS agency operating in multiple jurisdictions will be required to notify all other jurisdictions in writing of conditions of approved variance requests.
3. Issuance of a variance does not obligate other jurisdictions to allow the conditions of such variance if they conflict with local ordinances or regulations.
4. Both the written request and the recommendation of the governing body or chief administrative officer shall be submitted together to the Office of EMS.

B. If the applicant for a variance is an affiliated provider who is certified or a candidate for certification, the following requirements shall apply:

1. The written variance request shall be submitted for review and recommendations to the operational medical director and the head of the agency with which the provider is affiliated.
2. Both the written request and the recommendation of the operational medical director and the agency head shall be submitted to the Office of EMS.

C. Those providers who are not affiliated with an EMS agency shall submit their variance request to the commissioner for consideration. The commissioner may request additional case-specific endorsements or supporting documentation as part of the application.

12VAC5-31-60. Issuance of a variance.

A request for a variance may be approved and issued by the ~~Office of EMS commissioner~~ provided all of the following conditions are met:

1. The information contained in the request is complete and correct;
2. The agency, service, vehicle or person concerned is licensed, permitted or certified by the Office of EMS;
3. The ~~Office of EMS commissioner~~ determines the need for such a variance is genuine, and extenuating circumstances exist;
4. The ~~Office of EMS commissioner~~ determines that issuance of such a variance would be in the public interest and would not present any risk to, or threaten or endanger the public health, safety or welfare;

5. If the request is made by an EMS agency, the ~~Office of EMS commissioner~~ will consider the recommendation of the governing body or chief administrative officer provided all of the above conditions are met;

6. If the request is made by an affiliated provider who is certified or a candidate for certification, the Office of EMS will consider the recommendation of the operational medical director and the agency head for which the provider is affiliated; and

7. The person making the request will be notified in writing of the approval and issuance within 30 days of receipt of the request unless the request is awaiting approval or disapproval of a license or certificate. In such case, notice will be given within 30 days of the issuance of the license or certificate.

12VAC5-31-80. Conditions of variance.

A variance shall be issued and remain valid with the following conditions:

1. A variance will be valid for a period not to exceed one year unless and until terminated by the ~~Office of EMS commissioner~~; and
2. A variance is neither transferable nor renewable under any circumstances.

12VAC5-31-90. Termination of variance.

A. The ~~Office of EMS commissioner~~ may terminate a variance at any time based upon any of the following:

1. Violations of any of the conditions of the variance;
2. Falsification of any information;
3. Suspension or revocation of the license, permit or certificate affected; or
4. A determination by the Office of EMS to the commissioner that continuation of the variance would present a risk to or threaten or endanger the public health, safety or welfare.

B. The ~~Office of EMS commissioner~~ will notify the license, permit or certificate holder of the termination by certified mail to his last known address.

C. Termination of a variance will take effect immediately upon receipt of notification unless otherwise specified.

12VAC5-31-100. Denial of a variance.

A request for a variance will be denied by the ~~Office of EMS commissioner~~ if any of the conditions of 12VAC5-31-60 fail to be met.

12VAC5-31-120. Public notice of request for exemption.

Upon receipt of a request for an exemption, the Office of EMS will cause notice of such request to be ~~published in a newspaper of general circulation in the area wherein the person making the request resides and in other major newspapers of general circulation in major regions of the Commonwealth.~~ The cost of such public notice will be borne

Regulations

by the person making the request posted on the Office of EMS section of the Virginia Department of Health's website.

12VAC5-31-160. Conditions of exemption.

A. An exemption remains valid for an indefinite period of time unless and until terminated by the ~~board or the Office of EMS commissioner~~, or unless an expiration date is specified.

B. An exemption is neither transferable nor renewable.

12VAC5-31-170. Termination of exemption.

A. The ~~Office of EMS commissioner~~ may terminate an exemption at any time based upon any of the following:

1. Violation of any of the conditions of the exemption;
2. Suspension or revocation of any licenses, permits or certificates involved; or
3. A determination by the ~~Office of EMS commissioner~~ that continuation of the exemption would present risk to, or threaten or endanger the public health, safety or welfare.

B. The ~~Office of EMS commissioner~~ will notify the person to whom the exemption was issued of the termination by certified mail to his last known address.

C. Termination of an exemption takes effect immediately upon receipt of notification unless otherwise specified.

12VAC5-31-180. Denial of an exemption.

A request for an exemption will be denied by the ~~Office of EMS commissioner~~ if any of the conditions of these regulations fail to be met.

Article 4

Enforcement Procedures

12VAC5-31-200. Right to enforcement.

A. The Office of EMS may use the enforcement procedures provided in this article when dealing with any deficiency or violation of these regulations or any action or procedure that varies from the intent of these regulations.

B. The Office of EMS may determine that a deficiency or violation of these regulations or any action or procedure that varies from the intent of these regulations occurred.

C. The enforcement procedures provided in this article are not mutually exclusive. The Office of EMS may invoke as many procedures as the situation may require.

D. The commissioner empowers the Office of EMS to enforce the provisions of these regulations.

E. An agency and all places of operation shall be subject to inspection by the Office of EMS for compliance with these regulations. The inspection may include any or all of the following:

1. All fixed places of operations, including all offices, stations, repair shops, or training facilities.
2. All applicable records maintained by the agency.
3. All EMS vehicles and required equipment used by the agency.

12VAC5-31-210. Enforcement actions.

An enforcement action must be delivered to the affected person and must specify information concerning the violations, the actions required to correct the violations and the specific date by which correction must be made as follows:

1. Warning: a verbal notification of an action or situation potentially in violation of these regulations.

2. Citation: a written notification for violations of these regulations.

3. Suspension: a written notification of the deactivation and removal of authorization issued under a license, permit, certification, endorsement or designation.

4. Civil penalty: The commissioner or designee may impose a civil penalty on an agency or entity that fails or refuses compliance with these regulations. Civil penalties may be assessed up to \$1,000 per offense. Violations shall be single, different occurrence for each calendar day the violation occurs and remains uncorrected.

~~4.~~ 5. Action of the commissioner: the commissioner may command a person operating in violation of these regulations or state law pursuant to the commissioner's authority under § 32.1-27 of the Code of Virginia and the Administrative Process Act to halt such operation or to comply with applicable law or regulation. A separate and distinct offense will be deemed to have been committed on each day during which any prohibited act continues after written notice to the offender.

~~5.~~ 6. Criminal enforcement: the commissioner may elect to enforce any part of these regulations or any provision of Title 32.1 of the Code of Virginia by seeking to have criminal sanctions imposed. The violation of any of the provisions of these regulations constitutes a misdemeanor. A separate and distinct offense will be deemed to have been committed on each day during which any prohibited act continues after written notice by the commissioner to the offender.

12VAC5-31-220. Suspension of a license, permit, certificate, endorsement or designation.

A. The ~~Office of EMS commissioner~~ may suspend an EMS license, permit, certificate, endorsement or designation without a hearing, pending an investigation or revocation procedure.

1. Reasonable cause for suspension must exist before such action is taken by the ~~Office of EMS commissioner~~. The decision must be based upon a review of evidence available to the ~~Office of EMS commissioner~~.

2. The ~~Office of EMS commissioner~~ may suspend an agency or service license, vehicle permit, personnel certificate, endorsement or designation for failure to adhere to the standards set forth in these regulations.

3. An EMS agency license or registration may be suspended if the agency, service or any of its vehicles or personnel are found to be operating in a manner that presents a risk to, or threatens, or endangers the public health, safety or welfare.

4. An EMS vehicle permit may be suspended if the vehicle is found to be operated or maintained in a manner that presents a risk to, threatens, or endangers the public health, safety or welfare, or if the EMS agency license has been suspended.

5. EMS personnel may be suspended if found to be operating or performing in a manner that presents a risk to, or threatens, or endangers the public health, safety or welfare.

6. An EMS training certification may be suspended if the certificate holder is found to be operating or performing in a manner that presents a risk to, or threatens, or endangers the public health, safety or welfare.

B. Suspension of an EMS agency license shall result in the simultaneous and concurrent suspension of the vehicle permits.

C. The ~~Office of EMS commissioner~~ will notify the licensee, or permit or certificate holder of the suspension in person or by certified mail to his last known address.

D. A suspension takes effect immediately upon receipt of notification unless otherwise specified. A suspension remains in effect until the ~~Office of EMS commissioner~~ further acts upon the license, permit, certificate, endorsement or designation or until the order is overturned on appeal as specified in the Administrative Process Act.

E. The licensee, or permit or certificate holder shall abide by any notice of suspension and shall return all suspended licenses, permits and certificates to the Office of EMS within 10 days of receipt of notification.

F. The Office of EMS may invoke any procedure set forth in this part to enforce the suspension.

12VAC5-31-230. Revocation of a license, permit or certificate.

A. The ~~Office of EMS commissioner~~ may revoke an EMS license, permit, certificate, endorsement, or designation after a hearing or waiver thereof.

1. Reasonable cause for revocation must exist before such action by the ~~Office of EMS commissioner~~.

2. The ~~Office of EMS commissioner~~ may revoke an EMS agency license, EMS vehicle permit, vehicle permit, certification, endorsement or designation for failure to adhere to the standards set forth in these regulations.

3. The ~~Office of EMS commissioner~~ may revoke an EMS agency license, an EMS vehicle permit, or EMS personnel certificate for violation of a correction order or for engaging in or aiding, abetting, causing, or permitting any act prohibited by these regulations.

4. The ~~Office of EMS commissioner~~ may revoke an EMS training certificate for failure to adhere to the standards as set forth in these regulations and the "~~Training Program Administration Manual~~" in effect for the level of ~~instruction concerned~~, or for lack of competence at such level as evidenced by lack of basic knowledge or skill, or for incompetent or unwarranted acts inconsistent with the standards in effect for the level of certification concerned.

5. The ~~Office of EMS commissioner~~ may revoke an EMS agency license for violation of federal or state laws resulting in a civil monetary penalty.

B. Revocation of an EMS agency license shall result in the simultaneous and concurrent revocation of vehicle permits.

C. The ~~Office of EMS commissioner~~ will notify the holder of a license, certification, endorsement or designation of the intent to revoke by signed receipt in person or certified mail to his last known address.

D. The holder of a license, certification, endorsement or designation will have the right to a hearing.

1. If the holder of a license, certification, endorsement or designation desires to exercise his right to a hearing, he must notify the Office of EMS in writing of his intent within 10 days of receipt of notification. In such cases, a hearing must be conducted and a decision rendered in accordance with the Administrative Process Act.

2. Should the holder of a license, certification, endorsement or designation fail to file such notice, he will be deemed to have waived the right to a hearing. In such case, the ~~Office of EMS commissioner~~ may revoke the license or certificate.

E. A revocation takes effect immediately upon receipt of notification unless otherwise specified. A revocation order is permanent unless and until overturned on appeal.

F. The holder of a license, certification, endorsement or designation shall abide by any notice of revocation and shall return all revoked licenses, permits and certificates to the Office of EMS within 10 days of receipt of the notification of revocation.

G. The Office of EMS may invoke any procedures set forth in this part to enforce the revocation.

12VAC5-31-240. Correction order.

A. The Office of EMS may order the holder of a license, certification, endorsement or designation to correct a deficiency, cease any violations or comply with these regulations by issuing a written correction order as follows:

1. Correction orders may be issued in conjunction with any other enforcement action in response to individual violations or patterns of violations.

2. The Office of EMS will determine that a deficiency or violation exists before issuance of any correction order.

B. The Office of EMS will send a correction order to the licensee or permit or certificate holder by a signed receipt in

Regulations

person or certified mail to his last known address. Notification will include, but not be limited to, a description of the deficiency or violation to be corrected, and the period within which the deficiency or situation must be corrected, which shall not be less than 30 days from receipt of such order, unless an emergency has been declared by the Office of EMS.

C. A correction order takes effect upon receipt and remains in effect until the deficiency is corrected or until the license, permit, certificate, endorsement or designation is suspended, revoked, or allowed to expire or until the order is overturned or reversed.

D. Should the licensee or permit, certificate, endorsement or designation holder be unable to comply with the correction order by the prescribed date, he may submit a request for modification of the correction order with the Office of EMS. The Office of EMS will approve or disapprove the request for modification of the correction order within 10 days of receipt.

E. The licensee or permit, certificate, endorsement or designation holder shall correct the deficiency or situation within the period stated in the order.

1. The Office of EMS will determine whether the correction is made by the prescribed date.

2. Should the licensee or permit, certificate, endorsement or designation holder fail to make the correction within the time period cited in the order, the Office of EMS may invoke any of the other enforcement procedures set forth in this part.

12VAC5-31-290. Exclusions from these regulations.

A. Any person or privately owned vehicle not engaged in the business, service, or regular activity of providing medical care or transportation of persons who are sick, injured, wounded, or otherwise disabled.

B. Any person or vehicle rendering emergency medical services or medical transportation in the case of a major medical emergency when the EMS agencies, vehicles and personnel based in or near the location of such major emergency are insufficient to render services required.

C. EMS agencies, vehicles or personnel based outside of Virginia, except that any agency, vehicle or person responding from outside Virginia to an emergency within Virginia and providing emergency medical services to a patient within Virginia, whether or not the service includes transportation, shall comply with the provisions of these regulations.

D. An agency of the United States government providing emergency medical services in Virginia and any EMS vehicles operated by the agency.

E. Any vehicle owned by an EMS agency ~~vehicle~~ used exclusively for the provision of rescue services.

F. Any medical facility, but only with respect to the provision of emergency medical services within the facility.

G. Personnel employed by, or associated with, a medical facility who provides emergency medical services within the medical facility, but only with respect to the services provided therein.

H. Wheelchair interfacility transport services and wheelchair interfacility transport service vehicles that are engaged, whether or not for profit, in the business, service, or regular activity of and exclusively used for transporting wheelchair bound passengers between medical facilities in the Commonwealth when no ancillary medical care or oversight is necessary. However, such services and vehicles shall comply with Department of Medical Assistance Services regulations regarding the transportation of Medicaid recipients to covered services.

[12VAC5-31-330. Compliance with regulations.

A. A person shall comply with these regulations. ~~The Office of EMS will publish the Virginia EMS Compliance Manual, a document that describes and provides guidance to EMS agencies, vehicles and personnel on how to comply with these regulations.~~

B. An EMS agency, including its EMS vehicles and EMS personnel, shall comply with these regulations, the applicable regulations of other state agencies, the Code of Virginia, and the United States Code.]

12VAC5-31-370. Designated emergency response agency.

An EMS agency that responds to medical emergencies for its primary service area shall be a designated emergency response agency. A designated emergency response agency shall provide services within its primary service area as defined by the local EMS response plan.

12VAC5-31-380. EMS agency availability.

A. An EMS agency shall provide service within its primary service area on a 24-hour continuous basis as defined by the local EMS response plan.

B. Licensed EMS agencies that meet the criteria stated in 12VAC5-31-370 but that operate under special conditions, i.e., time of year, etc., must also meet the criteria outlined in 12VAC5-31-430 A 2 and C 4.

12VAC5-31-390. ~~Destination/trauma triage~~ Destination to specialty care hospitals.

An EMS agency shall ~~participate in the regional Trauma Triage Plan~~ follow specialty care hospital triage plans [~~for trauma, stroke, and others as recognized by OEMS~~] established in accordance with § 32.1-111.3 of the Code of Virginia. [~~EMS agencies' OMD approved patient care protocols shall have a triage component consistent with Code of Virginia mandated state specialty care hospital triage plans.~~]

12VAC5-31-400. Nondiscrimination.

An EMS agency ~~may~~ shall not discriminate due to a patient's race, gender, creed, color, national origin, location, medical condition or any other reason.

[12VAC5-31-420. Application for EMS agency license.

A. An applicant for EMS agency licensure shall file a written application specified by the Office of EMS.

B. The Office of EMS may use whatever means of investigation necessary to verify any or all information contained in the application.

C. An ordinance or resolution from the governing body of each locality where the agency maintains an office, stations an EMS vehicle for response within a locality or is a Designated Emergency Response Agency as required by § 15.2-955 of the Code of Virginia confirming approval. This ordinance or resolution must specify the geographic boundaries of the agency's primary service area within the locality.

D. The Office of EMS will determine whether an applicant or licensee is qualified for licensure based upon the following:

1. An applicant or licensee must meet the personnel requirements of these regulations.
2. If the applicant is a company or corporation, as defined in § 12.1-1 of the Code of Virginia, it must clearly disclose the identity of its owners, officers and directors.
3. An applicant or licensee must provide information on any previous record of performance in the provision of emergency medical service or any other related licensure, registration, certification or endorsement within or outside Virginia.

4. The applicant must submit a written agreement with the local governing body that states the applicant agency will assist in mutual aid requests from the local government if EMS personnel, vehicles, equipment, and other resources are available.

E. An applicant agency and all places of operation shall be subject to inspection by the Office of EMS for compliance with these regulations. The inspection may include any or all of the following:

1. All fixed places of operations, including all offices, stations, repair shops or training facilities.
2. All applicable records maintained by the applicant agency.
3. All EMS vehicles and required equipment used by the applicant agency.]

12VAC5-31-430. Issuance of an EMS agency license.

A. An EMS agency license may be issued by the Office of EMS provided the following conditions are met:

1. All information contained in the application is complete and correct; and
2. The applicant is determined by the Office of EMS to be eligible for licensure in accordance with these regulations.

[3. The applicant is determined by the Office of EMS to provide emergency medical services to the citizens of the Commonwealth in accordance with this chapter.]

B. The issuance of a license hereunder may not be construed to authorize any agency to operate any emergency medical services vehicle without a franchise or permit in any county or municipality which has enacted an ordinance pursuant to § 32.1-111.14 of the Code of Virginia making it unlawful to do so.

C. An EMS agency license may include the following information:

1. The name and address of the EMS agency;
2. The expiration date of the license;
3. The types of services for which the EMS agency is licensed; and
4. Any special conditions that may apply.

D. An EMS agency license will be issued and remain valid with the following conditions:

1. An EMS agency license is valid for a period of no longer than two years from the last day of the month of issuance unless and until revoked or suspended by the ~~Office of EMS~~ commissioner.
2. An EMS agency license is not transferable.
3. An EMS agency license issued by the Office of EMS remains the property of the Office of EMS and may not be altered or destroyed.

[12VAC5-31-460. Denial of an EMS agency license.

A. An application for a new EMS agency license or renewal of an EMS agency license may be denied by the Office of EMS if the applicant or agency does not comply with these regulations.

B. An application for a new agency license or renewal of an EMS agency license shall not be issued by the Office of EMS to any firm, corporation, agency, organization, or association that does not intend to provide emergency medical services as part of its operation to the citizens of the Commonwealth.]

12VAC5-31-480. Termination of EMS agency licensure.

A. An EMS agency terminating service shall surrender the EMS agency license to the Office of EMS.

B. An EMS agency terminating service shall submit written notice to the Office of EMS at least 90 days in advance. Written notice of intent to terminate service must verify the following:

1. Notification of the applicable OMDs, regional EMS councils or local EMS resource agencies, PSAPs and governing bodies of each locality served.
2. Termination of all existing contracts for EMS services, Mutual Aid Agreements, or both.
3. Advertised notice of its intent to discontinue service has been published in a newspaper of general circulation in its

Regulations

service area and to be posted on the Office of EMS section of the Virginia Department of Health's website.

C. Within 30 days following the termination of service, the EMS agency shall provide written verification to the Office of EMS of the following:

1. The return of its EMS agency license and all associated vehicle permits to the Office of EMS.
2. The removal of all signage or insignia that advertise the availability of EMS to include but not be limited to facility and roadway signs, vehicle markings and uniform items.
3. The return of all ~~medication drug~~ kits that are part of a local or regional ~~medication drug kit~~ exchange program or provision for the proper disposition of ~~medications drugs~~ maintained under a Board of Pharmacy controlled substance registration.
4. The maintenance and secure storage of required agency records and prehospital patient care reports (PPCRs) for a minimum of ~~five~~ six years from the date of termination of service.

12VAC5-31-500. Place of operations.

A. An EMS agency shall maintain a fixed physical location. Any change in the address of ~~this location requires the~~ primary business location and any satellite location require notification to the Office of EMS before relocation of the office space.

B. Adequate, clean and enclosed storage space for linens, equipment and supplies shall be provided at each place of operation.

C. The following sanitation measures are required at each place of operation ~~in accordance with standards established by the Centers for Disease Control and Prevention (CDC) established by the CDC~~ and the Virginia occupational safety and health laws (Title ~~40.1-4~~ 40.1 of the Code of Virginia):

1. All areas used for storage of equipment and supplies shall be kept neat, clean, and sanitary.
2. All soiled supplies and used disposable items shall be stored or disposed of in plastic bags, covered containers or compartments provided for this purpose. Regulated waste shall be stored in a red or orange bag or container clearly marked with a biohazard label.

12VAC5-31-510. Equipment and supplies.

A. An EMS agency shall hold the permit to an EMS vehicle or have a written agreement for the access to and use of an EMS vehicle. An EMS agency that does not use an EMS vehicle shall maintain the required equipment and supplies for a nontransport response vehicle.

B. Adequate stocks of supplies and linens shall be maintained as required for the classes of vehicles in service at each place of operations. An EMS agency shall maintain a supply of at least ~~75~~ 25 triage tags of a design approved by the Office of EMS on each permitted EMS vehicle. ~~These~~

~~tags must be maintained in a location readily accessible by all agency personnel.~~

12VAC5-31-520. Storage and security of ~~medications~~ drugs and related supplies.

A. An area used for storage of ~~medications~~ drugs and administration devices and a ~~medication drug~~ kit used on an EMS vehicle shall comply with requirements established by the Virginia Board of Pharmacy and the applicable drug manufacturer's recommendations for climate-controlled storage.

B. ~~Medications~~ Drugs and ~~medication drug~~ kits shall be maintained within their expiration date at all times.

C. ~~Medications~~ Drugs and ~~medication drug~~ kits shall be removed from vehicles and stored in a properly maintained and locked secure area when the vehicle is not in use unless the ambient temperature of the vehicle's interior ~~medication drug~~ storage compartment is maintained within the climate requirements specified in this section.

D. An EMS agency shall notify the Office of EMS in writing of any diversion of (i.e., loss or theft) or tampering with any controlled substances, ~~medication drug~~ delivery devices, or other regulated medical devices from an agency facility or vehicle. Notification shall be made within 15 days of the discovery of the occurrence.

E. An EMS agency shall protect EMS vehicle contents from climate extremes.

12VAC5-31-530. Preparation and maintenance of records and reports.

An EMS agency is responsible for the preparation and maintenance of records that shall be available for inspection by the Office of EMS as follows:

1. Records and reports shall at all times be stored in a manner to ensure reasonable safety from water and fire damage and from unauthorized disclosure to persons other than those authorized by law.
2. EMS agency records shall be prepared and securely maintained at the principal place of operations or a secured storage facility for a period of not less than five years.

12VAC5-31-540. Personnel records.

A. An EMS agency shall have a current personnel record for each individual affiliated with the EMS agency. Each file shall contain documentation of certification (~~copy of EMS certification, healthcare provider license or EVOC, or both~~), training and qualifications for the positions held.

B. An EMS agency shall have a record for each individual affiliated with the EMS agency documenting the results of a criminal history background check conducted through the Central Criminal Records Exchange ~~operated by and the~~ National Crime Information Center via the Virginia State Police, a driving record transcript from the individual's state Department of Motor Vehicles office, and any documents

required by the Code of Virginia, no more than 60 days prior to the individual's affiliation with the EMS agency.

12VAC5-31-560. Patient care records.

A. An original ~~prehospital patient care report (PPCR)~~ PPCR shall specifically identify by name the personnel who meet the staffing requirements of the EMS vehicle.

B. The PPCR shall include the name and identification number of all EMS Personnel on the EMS vehicle and the signature of the attendant-in-charge.

C. The required minimum data set shall be submitted on a schedule established by the Office of EMS as authorized in § 32.1-116.1 of the Code of Virginia. This requirement for data collection and submission shall not apply to patient care rendered during local emergencies declared by the locality's government and states of emergency declared by the Governor. During such an incident, an approved triage tag shall be used to document patient care provided unless a standard patient care report is completed.

12VAC5-31-570. EMS Agency Status Report.

A. An EMS agency must submit an "EMS Agency Status Report" to the Office of EMS within 30 days of a request or change in status of the following:

1. Chief executive officer.
- ~~2. Chief of operations.~~
- ~~3. 2. Training officer.~~
4. 3. Designated infection control officer.
- ~~5. Other information as required.~~

B. The EMS agency shall provide the leadership position held, to include title, term of office, mailing address, home and work telephone numbers ~~and~~ other available electronic addresses for each individual, and other information as required.

12VAC5-31-590. Operational Medical Director requirement.

A. An EMS agency shall have a minimum of one operational medical director (OMD) who is a licensed physician holding endorsement as an EMS physician from the Office of EMS.

An EMS agency shall enter into a written agreement with an EMS physician to serve as OMD with the EMS agency. This agreement shall at a minimum specify the following responsibilities and authority:

1. This agreement must describe the process or procedure by which the OMD or EMS agency may discontinue the agreement with prior notification of the parties involved ~~in accordance with these regulations~~ pursuant to 12VAC5-31-1910.
2. This agreement must identify the specific responsibilities of each EMS physician if an EMS agency has multiple OMDs.

3. This agreement must specify that EMS agency personnel may only provide emergency medical care and participate in associated training programs while acting ~~under~~ with the ~~authority~~ authorization of the operational medical ~~director's~~ license ~~director~~ and within the scope of the EMS agency license in accordance with these regulations.

4. This agreement must provide for EMS agency personnel to have ~~direct~~ access to the agency OMD in regards to discussion of issues relating to provision of patient care, application of patient care protocols or operation of EMS equipment used by the EMS agency.

5. This agreement must ensure that the adequate indemnification ~~exists~~ or insurance coverage exists for:
- a. Medical malpractice; and
 - b. Civil ~~liability~~ claims.

B. EMS agency and OMD conflict resolution.

1. In the event of an unresolved conflict between an EMS agency and its OMD, the issues involved shall be brought before the regional EMS council or local EMS resource's medical direction committee (or approved equivalent) for review and resolution.

2. When an EMS agency determines that the OMD presents an immediate significant risk to the public safety or health of citizens, the EMS agency shall attempt to resolve the issues in question. If an immediate risk remains unresolved, the EMS agency shall contact the Office of EMS for assistance.

C. Change of operational medical director.

1. An EMS agency choosing to secure the services of another OMD shall provide a minimum of 30 days advance written notice of intent to the current OMD and the Office of EMS.

2. An OMD choosing to resign shall provide the EMS agency and the Office of EMS with a minimum of 30 days written notice of such intent.

3. When extenuating circumstances require an immediate change of an EMS agency's OMD (e.g., death, critical illness, etc.), the Office of EMS shall be notified by the OMD within one business day so that a qualified replacement may be approved. In the event that the OMD is not capable of making this notification, the EMS agency shall be responsible for compliance with this requirement. Under these extenuating circumstances, the Office of EMS will make a determination whether the EMS agency will be allowed to continue its operations pending the approval of a permanent or temporary replacement OMD.

4. When temporary circumstances require a short-term change of an EMS agency's OMD for a period not expected to exceed one year (e.g., military commitment, unexpected clinical conflict, etc.), the Office of EMS shall be notified by the OMD within 15 days so that a qualified replacement may be approved.

Regulations

5. The Office of EMS may delay implementation of a change in an EMS agency's OMD pending the completion of any investigation of an unresolved conflict or possible violation of these regulations or the Code of Virginia.

12VAC5-31-610. Designated emergency response agency standards.

A. A designated emergency response agency shall develop or participate in a written local EMS response plan that addresses the following items:

1. The designated emergency response agency shall develop and maintain, in coordination with their locality, a written plan to provide 24-hour coverage of the agency's primary service area with the available personnel to achieve the approved responding interval standard.

2. A designated emergency response agency shall conform to the local responding interval, or in the absence of a local standard the EMS agency shall develop a standard in conjunction with OMD and local government in the best interests of the patient and the community. The EMS agency shall use the response time standard to establish a time frame the EMS agency complies with on a 90% basis within its primary service area (i.e., a time frame in which the EMS agency can arrive at the scene of a medical emergency in 90% or greater of all calls).

a. If the designated emergency response agency finds it is unable to respond within the established unit mobilization interval standard, the call shall be referred to the closest available mutual aid EMS agency.

b. If the designated emergency response agency finds it is able to respond to the patient location sooner than the mutual aid EMS agency, the EMS agency shall notify the PSAP of its availability to respond.

c. If the designated emergency response agency is unable to respond (e.g., lack of operational response vehicle or available personnel), the EMS agency shall notify the PSAP.

d. If a designated emergency response agency determines in advance that it will be unable to respond for emergency service for a specified period of time, it shall notify its PSAP.

B. A designated emergency response agency shall have available for review a copy of the local EMS response plan that shall include the established EMS Responding Interval standards.

C. A designated emergency response agency shall document its compliance with the established EMS response capability, unit mobilization interval, and responding interval standards.

D. A designated emergency response agency shall document an annual review of exceptions to established EMS response capability and time interval standards. The results of this review shall be provided to the agency's operational medical director and local governing body.

[12VAC5-31-650. Temporary EMS vehicle permit.

A. A temporary EMS vehicle permit may be issued for a permanent replacement or additional EMS vehicle pending inspection. A temporary EMS vehicle permit will not be issued for a vehicle requesting a "reserved" permit.

B. An EMS agency shall file written application for a temporary permit on forms specified by the Office of EMS. Submission of this application requires the EMS agency to attest that the vehicle complies with these regulations.

C. The Office of EMS may verify any or all information contained in the application before issuance.

D. The procedure for issuance of a temporary EMS vehicle permit is as follows:

1. An EMS agency requesting a temporary permit shall submit a completed application for an EMS vehicle permit attesting that the vehicle complies with these regulations.

2. The Office of EMS may inspect an EMS vehicle issued a temporary permit at any time for compliance with these regulations and issuance of an EMS vehicle permit.

E. A temporary EMS vehicle permit may include but not be limited to the following information:

1. The name and address of the EMS agency.

2. The expiration date of the EMS vehicle permit.

3. The classification and type of the EMS vehicle.

4. The motor vehicle license plate number of the vehicle.

5. Any special conditions that may apply.

F. A temporary EMS vehicle permit will be issued and remain valid with the following conditions:

1. A temporary EMS vehicle permit is valid for ~~60~~ 180 days from the end of the month issued.

2. A temporary EMS vehicle permit is not transferable.

3. A temporary EMS vehicle permit is not renewable.

4. A temporary EMS vehicle permit shall be affixed on the vehicle to be readily visible and in a location and manner specified by the Office of EMS. An EMS vehicle may not be operated without a properly displayed permit.]

Article 3

Emergency Medical Services Vehicle Classifications and Requirements

12VAC5-31-700. EMS vehicle safety.

An EMS vehicle shall be maintained in good repair and safe operating condition and shall meet the same motor vehicle, vessel or aircraft safety requirements as apply to all vehicles, vessels or craft in Virginia:

1. Virginia motor vehicle safety inspection, FAA Airworthiness Permit or Coast Guard Safety Inspection or approved equivalent must be current.

2. Exterior surfaces of the vehicle including windows, mirrors, warning devices and lights shall be kept clean of dirt and debris.

3. Ground vehicle operating weight shall be no more than the manufacturer's gross vehicle weight (GVW) minus 700 pounds (316 kg).

4. Emergency operating privileges including the use of audible and visible emergency warning devices shall be exercised in compliance with the Code of Virginia and local motor vehicle ordinances.

5. ~~Smoking~~ [~~Tobacco~~ The] use [of any and all tobacco products] is prohibited in [~~an~~] EMS transport [~~vehicle vehicles~~] at all times.

6. ~~Possession of a firearm, weapon, or explosive or incendiary device on any EMS vehicle is prohibited, except:~~

a. ~~A sworn law enforcement officer authorized to carry a concealed weapon pursuant to § 18.2-308 of the Code of Virginia.~~

b. ~~Any rescue line gun or other rescue device powered by an explosive charge carried on a nontransport response vehicle.~~

12VAC5-31-710. EMS vehicle occupant safety.

A. An occupant shall use mechanical restraints as required by the Code of Virginia. Stretcher patients shall be secured on the stretcher utilizing a minimum of three straps unless contraindicated by patient condition.

B. Equipment and supplies in the patient compartment shall be stored within a closed and latched compartment or fixed securely in place while not in use.

~~C. While the vehicle is in motion, equipment and supplies at or above the level of the patient's head while supine on the primary ambulance stretcher shall be secured in place to prevent movement.~~

12VAC5-31-750. EMS vehicle warning lights and devices.

An EMS vehicle shall have emergency warning lights and audible devices as approved by the Superintendent of Virginia State Police, Virginia Department of Game and Inland Fisheries or the Federal Aviation Administration (FAA) as applicable.

1. A ~~Ground~~ ground EMS vehicle shall have flashing or blinking lights installed to provide adequate visible warning from all four sides.

2. A ~~Ground~~ ground EMS vehicle shall have flashing or blinking red or red and white lights installed on or above the front bumper and below the bottom of the windshield.

3. ~~An~~ A ground EMS vehicle shall have an audible warning device installed to project sound forward from the front of the EMS vehicle.

12VAC5-31-760. EMS vehicle communications.

A. An EMS vehicle shall have fixed communications equipment that provides direct two-way voice communications capabilities between the EMS vehicle, other EMS vehicles of the same agency, and either the agency's

base of operations (dispatch point) or a governmental public safety answering point (PSAP). This communication capability must be available within the agency's primary service area ~~or within a 25-mile radius of its base of operations, whichever is greater.~~ Service may be provided by private mobile radio service (PMRS) or by commercial mobile radio service (CMRS), but shall have direct and immediate communications via push-to-talk technology.

B. An ambulance transporting outside its primary service area shall have fixed or portable communications equipment that provides two-way voice communications capabilities between the EMS vehicle and either the agency's base of operations (dispatch point) or ~~a governmental public safety answering point (PSAP)~~ PSAP during the period of transport. Service may be provided by private mobile radio service (PMRS) or by commercial mobile radio service (CMRS). When operating outside the agency's ~~primary service area or a 25-mile radius of its base of operations~~ of routine responsibility or in areas where CMRS is not available, the requirement for direct and immediate communications via push-to-talk technology does not apply. ~~This requirement does not apply in areas where CMRS is not available. If an agency is licensed as a DERA, it is required to have direct and immediate communications via push-to-talk technology for either the agency's base of operations, dispatch point, or PSAP for which the EMS agency vehicle is used for emergency response to the public in the jurisdiction where a memorandum of understanding or memorandum of agreement is in place or is contractually obligated to provide emergency response.~~

C. An ambulance or an advanced life support-equipped, nontransport response vehicle shall have communications equipment that provides two-way voice communications capabilities between the EMS vehicle's attendant-in-charge and the receiving medical facilities to which it regularly transports or a designated central medical control on one or more of the following frequencies:

- 155.340 MHz (statewide HEAR);
- 155.400 MHz (Tidewater HEAR);
- 155.280 MHz (Inter-Hospital HEAR);
- 462.950/467.950 (MED 9 or CALL 1);
- 462.975/467.975 (MED 10 or CALL 2);
- 462.950-463.19375/467.950-468.19375 (UHF MED CHANNELS ~~1-103~~ 1-10); and
- 220 MHz, 700MHz, 800MHz, or 900MHz frequency and designated talkgroup or channel identified as part of an agency, jurisdictional, or regional communications plan for ambulance to hospital communications.

1. Patient care communications with medical facilities may not be conducted on the same frequencies or talkgroups as those used for dispatch and on-scene operations.

2. Before establishing direct push-to-talk communications with the receiving medical facility or central medical

Regulations

control, EMS vehicles may be required to dial an access code. Radios in ambulances or advanced life support-equipped, nontransport response vehicles must be programmed or equipped with encoding equipment necessary to activate tone-coded squelched radios at medical facilities to which they transport on a regular basis.

3. Nothing herein prohibits the use of CMRS for primary or secondary communications with medical facilities, provided that the requirements of this section are met.

D. Mutual aid interoperability. An EMS vehicle must have ~~fixed~~ communications equipment that provides direct two-way voice communications capabilities between the EMS vehicle and EMS vehicles of other EMS agencies within the jurisdiction and those EMS agencies with which it has mutual aid agreements. Service may be provided by private mobile radio service (PMRS) or by commercial mobile radio service (CMRS), but requires direct and immediate communications via push-to-talk technology. This requirement may be met by interoperability on a common radio frequency or talkgroup, or by fixed or interactive cross-patching under supervision of an agency dispatch center or governmental PSAP. The means of communications interoperability must be identified in any mutual aid agreements required by these regulations and must comply with the Virginia Interoperability Plan as defined by the Governor's Office of Commonwealth Preparedness.

E. Air ambulance interoperability. A nontransport EMS vehicle or ground ambulance must have ~~fixed~~ communications equipment that provides direct two-way voice communications capabilities between the EMS vehicle and air ambulances designated to serve its primary response area by the State Medevac Plan. An air ambulance must have fixed communications equipment that provides direct two-way voice communications capabilities between the air ambulance, other EMS vehicles in its primary response area, and public safety vehicles or personnel at landing zones on frequencies adopted in accordance with this section. Radio communications must be direct and immediate via push-to-talk technology. This requirement may be met by interoperability on a common radio frequency or talkgroup, or by fixed or interactive cross-patching under supervision of an agency dispatch center or governmental PSAP. The frequencies used for this purpose will be those set forth by an agreement among air ambulance providers and EMS agencies for a specific jurisdiction or region, and must be identified in agency, jurisdictional, or regional protocols for access and use of air ambulances. Any nontransport EMS vehicle or ground ambulance not participating in such an agreement must be capable of operating on VHF frequency 155.205 MHz (carrier squelch), which is designated as the Statewide EMS Mutual Aid Frequency. An air ambulance must be capable of operating on VHF frequency 155.205 MHz (carrier squelch) in addition to any other frequencies adopted for jurisdictional or regional interoperability.

F. FCC licensure. An EMS agency shall maintain appropriate FCC radio licensure for all radio equipment operated by the EMS agency. If the FCC radio license for any radio frequency utilized is held by another person, the EMS agency shall have written documentation on file of their assigned authority to operate on such frequencies.

G. In-vehicle communications. An ambulance shall have a means of voice communications (opening, intercom, or radio) between the patient compartment and operator's compartment.

[12VAC5-31-770. Ground EMS vehicle markings.

A. The vehicle body of a nontransport response vehicle, a ground ambulance or a neonatal ambulance must be marked with a reflective horizontal band permanently affixed to the sides and rear of the vehicle body. This horizontal reflective band must be of a material approved for exterior use, a minimum of four inches continuous in height.

~~B. The Star of Life emblem may appear on an EMS vehicle that conforms to the appropriate U.S. Department of Transportation specifications for the type and class of vehicle concerned. If used on any ground ambulance or neonatal ambulance, the emblem (14 inch size minimum) must appear on both sides of the EMS vehicle.~~

~~C. B.~~ The following must appear in permanently affixed lettering that is a minimum of three inches in height and of a color that contrasts with the surrounding vehicle background. Lettering must comply with the restrictions and specifications listed in these regulations.

1. Nontransport response vehicle. The name of the EMS agency that the vehicle is permitted to shall appear on both sides of the vehicle body in reflective lettering.

Exception: A designated emergency response agency must have the approval of the Office of EMS for a vehicle to display an alternate name.

2. Ground ambulance:

a. The name of the EMS agency that the vehicle is permitted to must appear on both sides of the vehicle body in reflective lettering.

Exception: A designated emergency response agency must have the approval of the Office of EMS for a vehicle to display an alternate name.

b. The word "AMBULANCE" in reverse on the vehicle hood or bug deflector.

c. The word "AMBULANCE" on or above rear doors.

3. Neonatal Ambulance:

a. The name of the EMS agency to which the vehicle is permitted must appear on both sides of the vehicle body in reflective lettering.

b. "NEONATAL CARE UNIT" or other similar designation, approved by the Office of EMS, must appear on both sides of the vehicle body.

12VAC5-31-790. EMS vehicle letter restrictions and specifications.

A. The following specifications apply to an EMS vehicle: the EMS agency name must appear in lettering larger than any optional lettering on an EMS vehicle, other than "Ambulance," the unit identification number or any lettering on the roof. Optional lettering, logos or emblems may not appear on an EMS vehicle in a manner that interferes with the public's ability to readily identify the EMS agency to which the EMS vehicle is permitted.

1. Additional lettering, logos or emblems must not advertise or imply a specified patient care level (i.e., Advanced Life Support Unit) unless the EMS vehicle is so equipped at all times.
2. The terms "Paramedic" or "Paramedical" may only be used when the EMS vehicle is both equipped and staffed by a state certified ~~EMT Paramedic~~ Paramedic at all times.

B. A nontransport response vehicle with a primary purpose as a fire apparatus or law-enforcement vehicle is not required to comply with the specifications for vehicle marking and lettering, provided the vehicle is appropriately marked and lettered to identify it as an authorized emergency vehicle.

C. An unmarked vehicle operated by an EMS agency is not eligible for issuance of an EMS vehicle permit except a vehicle used and operated by law-enforcement personnel.]

12VAC5-31-800. Nontransport response vehicle specifications.

A. A vehicle maintained and operated for response to the location of a medical emergency to provide immediate medical care at the basic or advanced life support level (excluding patient transport) shall be permitted as a nontransport response vehicle ~~unless specifically authorized under Part VI (12VAC5-31-2100 et seq.) of this chapter.~~

A nontransport response vehicle may not be used for the transportation of patients except in the case of a major medical emergency. In such an event, the circumstances of the call shall be documented.

B. A nontransport response vehicle must be constructed to provide sufficient space for safe storage of required equipment and supplies specified in these regulations.

A nontransport response vehicle used for the delivery of advanced life support must have a locking storage compartment or approved locking bracket for the security of ~~medications drugs and medication drug kits.~~ When not in use, ~~medications drugs and medication drug kits~~ must be kept locked in the required storage compartment or approved bracket at all times. The EMS agency shall maintain ~~medications drugs and medication drug kits~~ as specified in these regulations.

1. Sedan/zone car must have an approved locking device attached within the passenger compartment or trunk, inaccessible by the public.

2. Utility vehicle/van must have an approved locking device attached within the vehicle interior, inaccessible by the public.

3. Rescue vehicle/fire apparatus must have an approved locking device attached within the vehicle interior or a locked compartment, inaccessible by the public.

C. A nontransport response vehicle must have a motor vehicle safety inspection performed following completion of conversion and before applying for an EMS vehicle permit.

12VAC5-31-810. Ground ambulance specifications.

A. A vehicle maintained and operated for response to the location of a medical emergency to provide immediate medical care at the basic or advanced life support level and for the transportation of patients shall be permitted as a ground ambulance.

B. A ground ambulance must be commercially constructed and certified to comply with the current federal specification for the Star of Life ambulance (U.S. General Services Administration KKK-A-1822 standards) as of the date of vehicle construction, with exceptions as specified in these regulations.

C. A ground ambulance must be constructed to provide sufficient space for the safe storage of all required equipment and supplies. ~~+~~ A ground ambulance must have a locking interior storage compartment or approved locking bracket used for the secure storage of ~~medications drugs and medication drug kits~~ that is accessible from within the patient compartment. ~~Medications Drugs and medication drug kits~~ must be kept in a locked storage compartment or approved bracket at all times when not in use. The EMS agency must maintain ~~medications drugs and medication drug kits~~ as specified in these regulations.

~~2. Required equipment and supplies specified in these regulations, excluding those in 12VAC5-31-860 I, J and K, must be available for access and use from inside the patient compartment.~~

12VAC5-31-820. Advanced Life Support Equipment Package life support equipment package.

A. An EMS agency licensed to operate nontransport response vehicles or ground ambulances with ALS personnel shall maintain a minimum of one vehicle equipped with an ALS equipment package of the highest category licensed. ALS equipment packages consist of the following categories:

1. ALS – EMT-enhanced equipment package; and
2. ALS – ~~EMT intermediate/EMT paramedic~~ [Advanced EMT/EMT Intermediate/EMT Paramedic Advanced-EMT/Intermediate/Paramedic] equipment package.

B. ALS equipment packages shall consist of the equipment and supplies as specified in these regulations.

12VAC5-31-830. Neonatal ambulance specifications.

A. A vehicle maintained and operated exclusively for the transport of neonatal patients between medical facilities shall

Regulations

be permitted as a neonatal ambulance. A neonatal ambulance shall not be used for response to out-of-hospital medical emergencies.

B. A neonatal ambulance must be commercially constructed and certified to comply with the current U.S. General Services Administration KKK-A-1822 standards as of the date of vehicle construction.

C. A neonatal ambulance must be constructed to provide sufficient space for safe storage of required equipment and supplies specified in these regulations.

1. A neonatal ambulance must be equipped to transport two incubators using manufacturer-approved vehicle mounting devices.

2. A neonatal ambulance must have an installed auxiliary power unit that is capable of supplying a minimum of 1.5 Kw of 110VAC electric power. The auxiliary power unit must operate independent of the vehicle with starter and power controls located in the patient compartment.

3. A neonatal ambulance must have a locking interior storage compartment or approved locking bracket used for the secure storage of medications drugs and medication drug kits that is accessible from within the patient compartment. Medications Drugs and medication drug kits must be kept in a locked storage compartment or approved bracket at all times when not in use. The EMS agency must

maintain medications drugs and medication drug kits as specified in these regulations.

4. Required equipment and supplies specified in these regulations must be available for access and use from inside the patient compartment.

12VAC5-31-840. ~~Air ambulance specifications. (Repealed.)~~

~~A. An aircraft maintained and operated for response to the location of a medical emergency to provide immediate medical care at the basic or advanced life support level and for the transportation of patients shall be permitted as an air ambulance.~~

~~B. An air ambulance must be commercially constructed and certified to comply with the current U.S. Federal Aviation Administration standards as of the date of aircraft construction. An air ambulance must be constructed to provide sufficient space for safe storage of required equipment and supplies specified in these regulations.~~

~~C. Required equipment and supplies specified in these regulations, excluding those in 12VAC5-31-860 I and J, must be available for access and use from inside the patient compartment. A rotary wing air ambulance must be equipped with a 180 degree controllable searchlight of at least 400,000 candle power.~~

12VAC5-31-860. Required vehicle equipment.

REQUIRED VEHICLE EQUIPMENT	Nontransport Vehicle	Ambulance	EMT-E Package	EMT-I/P Package	Air Ambulance	Neonatal Ambulance
A. Basic life support equipment.						
Automated external defibrillator (AED) with a set of patient pads. This may be a combination device that also has manual defibrillation capability.	1	1				
Pocket mask or disposable airway barrier device with one-way valve.	2	2			1	2
Oropharyngeal airways, set of 6, nonmetallic in infant, child and adult sizes, ranging from 43mm to 100 mm (sizes 0-5).	2	2			1	2
Nasopharyngeal airways, set of 4, varied sizes, with water-soluble lubricant.	1	1			1	1
Self-inflating bag-valve-mask resuscitator with oxygen reservoir in adult size with transparent mask in adult size.	1	1			1	1

Self-inflating bag-valve-mask resuscitator with oxygen reservoir in child size with transparent masks in infant and child sizes.	1	1			1	1
B. Oxygen apparatus.						
Portable oxygen unit containing a quantity of oxygen sufficient to supply the patient at the appropriate flow rate for the period of time it is anticipated oxygen will be needed, but not less than 10 liters per minute for 15 minutes. This unit must be capable of being manually controlled and have an appropriate flowmeter.	1	1			1	1
Installed oxygen system containing a sufficient quantity of oxygen to supply two patient flowmeters at the appropriate flow rate for the period of time it is anticipated oxygen will be needed, but not less than 10 liters per minute for 30 minutes. This unit must be capable of being manually controlled, have two flowmeters, and have an attachment available for a single-use humidification device.		1			1	1
High concentration oxygen masks (80% or higher delivery) in child and adult sizes. These masks must be made of single-use soft see-through plastic or rubber.	2	4			2	4
Oxygen nasal cannulae, in infant, child and adult sizes. These cannulae must be made of single-use soft see-through plastic or rubber.	2	4			2	4

Regulations

C. Suction apparatus.						
Portable suction apparatus capable of providing a minimum of twenty minutes of continuous operation at a vacuum of 300 millimeters of mercury or greater and free air flow of over 30 liters per minute at the delivery tube. A manually powered device does not meet this requirement.	1	1			1	1
Installed suction apparatus capable of providing a minimum of twenty minutes of continuous operation at a vacuum of 500 millimeters of mercury or greater and free air flow of over 30 liters per minute at the delivery tube.		1			1	1
Suction catheters that are sterile, individually wrapped, disposable, and made of rubber or plastic in sizes as follows: Rigid Tonsil Tip, FR18, FR14, FR 8 and FR 6.	2	2			2	2
D. Patient assessment equipment.						
Stethoscope in adult size.	1	2			1	1
Stethoscope in pediatric size.	1	1			1	1
Stethoscopes in infant and neonate sizes.						2
Sphygmomanometer in child, adult and large adult sizes.	1	1			1	1
Sphygmomanometer in infant size.						2
Vinyl triage tape, rolls, minimum of 150 ft. each of red, black, green and yellow.	1	1				
E. Dressings and supplies.						
First aid kit of durable construction and suitably equipped. The contents of this kit may be used to satisfy these supply requirements completely or in part.	1	1			1	1

Regulations

Trauma dressings, a minimum of 8" x 10" 5/8 ply when folded, sterile and individually wrapped.	4	4			2	4
4" x 4" gauze pads, sterile and individually wrapped.	24	24			10	24
Occlusive dressings, sterile 3" x 8" or larger.	4	4			2	4
Roller or conforming gauze of assorted widths.	12	12			12	12
Cloth Triangular bandages, 36" x 36" x 51", triangle unfolded.	10	10				
Medical adhesive tape, rolls of 1" and 2".	4	4			4	4
Trauma scissors.	1	1			1	1
Alcohol preps.	12	12			12	12
Emesis basin containers or equivalents.	2	2			2	2
Suspension of Activated Charcoal, 50 grams.	1	1				1
Sterile normal saline for irrigation, 1000 ml containers (or the equivalent volume in other container sizes).	1	4			2	4
F. Obstetrical kits, containing the following:	1	2			1	2
Sterile surgical gloves (pairs).	2	2			2	2
Scissors or other cutting instrument.	1	1			1	1
Umbilical cord ties (10" long) or disposable cord clamps.	4	4			4	4
Sanitary pads.	1	1			1	1
Cloth or disposable hand towels.	2	2			2	2
Soft-tipped bulb syringe.	1	1			1	1
G. Personal protection equipment.						
Waterless antiseptic handwash.	1	1			1	1
Exam gloves, nonsterile, pairs in sizes small through extra large.	5	10			5	10

Regulations

Disposable gowns/coveralls, each in assorted sizes if not one size fits all style.	2	4				4
Faceshield/eyewear.	2	4			2	4
Infectious waste trash bags.	2	4			2	4
H. Linen and bedding.						
Towels, cloth.	2	2			2	2
Pillows.		2				
Pillow cases.		2				
Sheets.		4			2	4
Blankets.	2	2			2	2
Male urinal.		1				
Bedpan with toilet paper.		1				
I. Splints and immobilization devices.						
Rigid cervical collars in sizes small adult, medium adult, large adult and pediatric. If adjustable type adult collars are used, then a minimum of three are sufficient.	2	2			1	2
Traction splint with ankle hitch and stand, or equivalent. Capable of adult and pediatric application.		1				
Padded board splints or equivalent for splinting fractures of the upper extremities.		2			1	
Padded board splints or equivalent for splinting fractures of the lower extremities.		2			1	
Long spineboards 16" x 72" minimum size, with at least four (4) appropriate restraint straps, cravats or equivalent restraint devices for each spine board.		2			1	
Short spineboard 16" x 34" minimum size or equivalent spinal immobilization devices.		1				
Pediatric immobilization device.		1				1

Cervical immobilization devices (i.e., set of foam blocks/towels or other approved materials).		2			1	
J. Safety equipment:						
Wheeled ambulance cot with a minimum 350 lb. capacity, three restraint straps and the manufacturer approved vehicle mounting device.		1				
Removable cot or spineboard with a minimum of three restraint straps and the manufacturer approved aircraft mounting device.					1	
"D" Cell or larger flashlight.	1	2	2	2	1	2
Five pound ABC or equivalent fire extinguisher securely mounted in the vehicle in a quick release bracket. One accessible to the patient compartment. *FAA requirements must be satisfied by Air Ambulances.*	1	2	2	2	1*	2
"No Smoking" sign located in the patient compartment.		1			1	1
K. Tools and hazard warning devices:						
Adjustable wrench, 10".	1	1				1
Screwdriver, regular #1 size blade.	1	1				1
Screwdriver, Phillips #1 size blade.	1	1				1
Hammer, minimum 2 lb.	1	1				1
Locking pliers, (vise grip type) 10".	1	1				1
Spring loaded center punch.	1	1				
Hazard warning devices (reflective cone, triangle or approved equivalent).	3	3				3
Current U.S. D.O.T. approved Emergency Response Guidebook.	1	1			1	1
L. Advanced life support equipment:						

Regulations

ECC monitor/manual defibrillator capable of synchronized cardioversion and noninvasive external pacing with capability for monitoring and defibrillating adult and pediatric patients.				1	1	1
ECC monitoring electrodes, set, in adult and pediatric sizes as required by device used.				2	2	
ECC monitoring electrodes, set, in infant size as required by device used.						2
Defibrillation and pacing electrodes in adult and pediatric sizes as required by device used.				2	2	2
Medication kit with all controlled medications authorized for use by the EMS agency's EMT-enhanced personnel and other appropriately licensed advanced level personnel. The medication kit may contain additional medications if the kit is a standardized box utilized by multiple EMS agencies operating under a joint box exchange program.			1			
Medication kit with all controlled medications authorized for use by the EMS agency's EMT-intermediate, EMT-paramedic and other authorized licensed personnel. The medication kit may contain additional medications if the kit is a standardized box utilized by multiple EMS agencies operating under a joint box exchange program.				1	1	1
Assorted intravenous, intramuscular, subcutaneous and other medication delivery devices and supplies as specified by the agency OMD.			1	1	1	1

M. Advanced airway equipment that must consist of:						
Dual lumen airway device (e.g., EOA, Combi tube, PTL) or laryngeal mask airway (LMA).			±	±		
Intubation kit to include all of the following items as indicated:			±	±	±	±
Laryngoscope handle with two sets of batteries, adult and pediatric blades in sizes 0-4.			±	±	±	
Laryngoscope handle with two sets of batteries, blades in sizes 0-1.						±
McGill forceps, in adult and pediatric sizes.			±	±	±	
Single use disposable endotracheal tubes in sizes 8.0, 7.0, 6.0, 5.0, 4.0, 3.0 and 2.5mm or equivalent sizes.			≥	≥	≥	
Single use disposable endotracheal tubes in sizes 4.0, 3.0 and 2.5mm or equivalent sizes.						≥
Rigid adult stylettes.			≥	≥	≥	
10 cc disposable syringes.			≥	≥	≥	≥
5 ml of water soluble surgical lubricant.			±	±	±	±

A. A nontransport vehicle shall carry the following:

1. Basic life support equipment.

- a. Automated external defibrillator (AED) with two sets of patient pads. This may be a combination device that also has manual defibrillation capability (1).
- b. Pocket mask or disposable airway barrier device with one-way valve (2).
- c. Oropharyngeal airways set of six, nonmetallic in infant, child, and adult sizes ranging from 43mm to 100mm (sizes 0-5) (1 each).
- d. Nasopharyngeal airways set of four, varied sizes, with water soluble lubricant (1).
- e. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in adult size with transparent mask in adult and child sizes (1).

f. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in infant size with transparent masks in infant size (1).

2. Oxygen apparatus.

- a. Portable oxygen unit containing a quantity of oxygen sufficient to supply the patient at the approximate flow rate for the period of time it is anticipated oxygen will be needed but not less [~~that~~ than] 10 liters per minute for 15 minutes. The unit must be capable of being manually controlled and have an appropriate flowmeter (1).
- b. High concentration oxygen masks, 80% or higher delivery, in child and adult sizes. These masks must be made of single use soft see-through plastic or rubber (2 each).
- c. Oxygen nasal cannula in child and adult sizes. This cannula must be made of single use soft see-through plastic or rubber (2 each).

Regulations

3. Suction apparatus.

- a. Battery powered portable suction apparatus. A manually powered device does not meet this requirement (1).
- b. Suction catheters that are sterile, individually wrapped, disposable, and made of rubber or plastic in sizes as follows: Rigid tonsil tip, FR18, FR14, FR8 and FR6 (2 each).

4. Patient assessment equipment.

- a. Stethoscope in adult size (1).
- b. Stethoscope in pediatric size (1).
- c. Sphygmomanometer in child, adult, and large adult sizes (1 each).
- d. Vinyl triage tape rolls of red, black, green, and yellow (1 each).
- e. 25 OEMS approved triage tags.
- f. Penlight (1).
- g. Medical protocols (1).

5. Dressing and supplies.

- a. First aid kit of durable construction and suitably equipped. The contents of this kit may be used to satisfy these supply requirements completely or in part (1).
- b. Trauma dressings, a minimum of 8" x 10" - 5/8 ply when folded, sterile and individually wrapped (4).
- c. 4" x 4" gauze pads, sterile and individually wrapped (24).
- d. Occlusive dressings, sterile 3" x 8" or larger (4).
- e. Roller or conforming gauze of assorted widths (12).
- f. Cloth triangular bandages, 36" x 36" x 51", triangle unfolded (10).
- g. Medical adhesive tape, rolls of 1" and 2" (4).
- h. Trauma scissors (1).
- i. Emesis basin containers or equivalents (2).
- j. Sterile normal saline for irrigation, 1000 ml containers (or equivalent volume in other container sizes) (1).
- k. Oral glucose (1).

6. Obstetrical kit [(+) (one)]. It must contain the following:

- a. Pairs of sterile surgical gloves (2).
- b. Scissors or other cutting instrument (1).
- c. Umbilical cord ties (10" long) or disposable cord clamps (4).
- d. Sanitary pads (1).
- e. Cloth or disposable hand towels (2).
- f. Soft-tipped bulb syringe (1).

7. Personal protection equipment.

- a. Waterless antiseptic hand wash (1).

- b. Exam gloves, nonsterile, pairs in sizes small though extra large (5 each).

- c. Disposable gowns or coveralls, each in assorted sizes if not one size fits all style (2).

- d. Face shield or eyewear (2).

- e. Infectious waste trash bags (2).

8. Linen and bedding.

- a. Towels, cloth (2).

- b. Blankets (2).

9. Splints and immobilization devices.

- Rigid cervical collars in sizes small adult, medium adult, large adult, and pediatric (2 each). If adjustable type collars are used, then a minimum of three are sufficient.

10. Safety equipment.

- a. "D" cell [battery] or larger flashlight (1).

- b. Five-pound Class ABC or equivalent fire extinguisher securely mounted in the vehicle in a quick release bracket (1).

- c. Safety apparel (2).

- d. Sharps container (1).

11. Tools and hazard warning devices.

- a. Adjustable wrench, 10" (1).

- b. Screwdriver, regular #1 size blade (1).

- c. Screwdriver, Phillips #1 size blade (1).

- d. Spring loaded center punch (1).

- e. Hazard warning devices such as a reflective cone, triangle, or approved equivalent (3 each).

- f. Current USDOT approved Emergency Response Guidebook (1).

B. A ground ambulance shall carry the following:

1. Basic life support equipment.

- a. Automated external defibrillator (AED) with two sets of patient pads. This may be a combination device that also has manual defibrillation capability (1).

- b. Pocket mask or disposable airway barrier device with one-way valve (2).

- c. Oropharyngeal airways set of six, nonmetallic in infant, child, and adult sizes ranging from 43mm to 100mm (sizes 0-5) (1 each).

- d. Nasopharyngeal airways set of four, varied sizes, with water soluble lubricant (1).

- e. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in adult size with transparent mask in adult and child sizes (1 each).

- f. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in infant size with transparent masks in infant size (1).

2. Oxygen apparatus.

- a. Portable oxygen unit containing a quantity of oxygen sufficient to supply the patient at the approximate flow rate for the period of time it is anticipated oxygen will be needed but not less [~~that~~ than] 10 liters per minute for 15 minutes. The unit must be capable of being manually controlled and have an appropriate flowmeter (1).
- b. Installed oxygen system containing a sufficient quantity of oxygen to supply two patient flowmeters at the appropriate flow rate for the period of time it is anticipated oxygen will be needed but not less [~~that~~ than] 10 liters per minute for 30 minutes. This unit must be capable of being manually controlled, have two flowmeters, and have an attachment available for a single-use humidification device (1).
- c. High concentration oxygen masks, 80% or higher delivery, in child and adult sizes. These masks must be made of single use soft see-through plastic or rubber (4 each).
- d. Oxygen nasal cannula in child and adult sizes. This cannula must be made of single use soft see-through plastic or rubber (4 each).

3. Suction apparatus.

- a. Battery powered portable suction apparatus. A manually powered device does not meet this requirement (1).
- b. Installed suction apparatus capable of providing a minimum of 20 minutes of continuous operation (1).
- c. Suction catheters that are sterile, individually wrapped, disposable, and made of rubber or plastic in sizes as follows: Rigid tonsil tip, FR18, FR14, FR8 and FR6 (2 each).

4. Patient assessment equipment.

- a. Stethoscope in adult size (2).
- b. Stethoscope in pediatric size (1).
- c. Sphygmomanometer in child, adult, and large adult sizes (1 each).
- d. Vinyl triage tape rolls of red, black, green, and yellow (1 each).
- e. 25 OEMS approved triage tags.
- f. Penlight (1).
- g. Medical protocols (1).

5. Dressing and supplies.

- a. First aid kit of durable construction and suitably equipped. The contents of this kit may be used to satisfy these supply requirements completely or in part (1).
- b. Trauma dressings, a minimum of 8" x 10" - 5/8 ply when folded, sterile and individually wrapped [(4) (four)].

- c. 4" x 4" gauze pads, sterile and individually wrapped (24).
- d. Occlusive dressings, sterile 3" x 8" or larger (4).
- e. Roller or conforming gauze of assorted widths (12).
- f. Cloth triangular bandages, 36" x 36" x 51", triangle unfolded (10).
- g. Medical adhesive tape, rolls of 1" and 2" (4).
- h. Trauma scissors (1).
- i. Alcohol preps (12).
- j. Emesis basin containers or equivalents (2).
- k. Sterile normal saline for irrigation, 1000 ml containers (or equivalent volume in other container sizes) (4).
- l. Oral glucose (2).

6. Obstetrical kit (2). It must contain the following:

- a. Pairs of sterile surgical gloves (2).
- b. Scissors or other cutting instrument (1).
- c. Umbilical cord ties (10" long) or disposable cord clamps (4).
- d. Sanitary pads (1).
- e. Cloth or disposable hand towels (2).
- f. Soft-tipped bulb syringe (1).

7. Personal protection equipment.

- a. Waterless antiseptic hand wash (1).
- b. Exam gloves, nonsterile, pairs in sizes small through extra large (10 each).
- c. Disposable gowns or coveralls, each in assorted sizes if not one size fits all style (4).
- d. Face shield or eyewear (4).
- e. Infectious waste trash bags (4).

8. Linen and bedding.

- a. Towels, cloth (2).
- b. Pillows (2).
- c. Pillow cases (2).
- d. Sheets (4).
- e. Blankets (2).
- f. Male urinal (1).
- g. Bedpan with toilet paper (1).

9. Splints and immobilization devices.

- a. Rigid cervical collars in sizes small adult, medium adult, large adult, and pediatric [~~(2)~~ (3)] each). If adjustable type collars are used, then a minimum of three are sufficient.
- b. Traction splint with ankle hitch and stand in adult and pediatric size (1 each) or an equivalent traction splint device capable of adult and pediatric application.
- c. Padded board splints or equivalent for splinting fractures of the upper extremities (2).

Regulations

- d. Padded board splints or equivalent for splinting fractures of the lower extremities (2).
- e. Long spine boards 16" x 72" minimum size with at least four appropriate restraint straps, cravats, or equivalent restraint devices for each spine board (2).
- f. Short spine board 16" x 34" minimum size or equivalent spinal immobilization devices (1).
- g. Pediatric immobilization device (1).
- h. Cervical immobilization devices (i.e., set of foam blocks, towels or other approved materials) (2).

10. Safety equipment.

- a. Wheeled ambulance cot with a minimum 350 lb. capacity, three restraint straps, and the manufacturer-approved vehicle mounting device (1).
- b. "D" cell [battery] or larger flashlight (2).
- c. Five-pound Class ABC or equivalent fire extinguisher securely mounted in the vehicle in a quick release bracket. One must be accessible to the patient compartment (2).
- d. Safety apparel (2).
- e. Sharps container, mounted or commercially secured (1).
- f. "No Smoking" sign located in the patient compartment (1).

11. Tools and hazard warning devices.

- a. Adjustable wrench, 10" (1).
- b. Screwdriver, regular #1 size blade (1).
- c. Screwdriver, Phillips #1 size blade (1).
- d. Spring loaded center punch (1).
- e. Hazard warning device (i.e., reflective cone, triangle, or approved equivalent) (3 total).
- f. Current USDOT approved Emergency Response Guidebook (1).

C. A neonatal ambulance shall carry the following:

1. Basic life support equipment.

- a. Pocket mask or disposable airway barrier device with one-way valve (2).
- b. Oropharyngeal airways set of six, nonmetallic in infant, child, and adult sizes ranging from 43mm to 100mm (sizes 0-5) (2 each).
- c. Nasopharyngeal airways set of four, varied sizes, with water soluble lubricant (1).
- d. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in adult size with transparent mask in adult size (1).
- e. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in child size with transparent masks in child size (1).

- f. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in infant size with transparent masks in infant size (1).

2. Oxygen apparatus.

- a. Portable oxygen unit containing a quantity of oxygen sufficient to supply the patient at the approximate flow rate for the period of time it is anticipated oxygen will be needed but not less [~~that~~ than] 10 liters per minute for 15 minutes. The unit must be capable of being manually controlled and have an appropriate flowmeter (1).
- b. Installed oxygen system containing a sufficient quantity of oxygen to supply two patient flowmeters at the appropriate flow rate for the period of time it is anticipated oxygen will be needed but not less [~~that~~ than] 10 liters per minute for 30 minutes. This unit must be capable of being manually controlled, have two flowmeters, and have an attachment available for a single-use humidification device (1).
- c. High concentration oxygen masks, 80% or higher delivery, in child and adult sizes. These masks must be made of single use soft see-through plastic or rubber (4 each).
- d. Oxygen nasal cannula in child and adult sizes. This cannula must be made of single use soft see-through plastic or rubber (4 each).

3. Suction apparatus.

- a. Battery-powered portable suction apparatus. A manually powered device does not meet this requirement (1).
- b. Installed suction apparatus capable of providing a minimum of 20 minutes of continuous operation (1).
- c. Suction catheters that are sterile, individually wrapped, disposable, and made of rubber or plastic in sizes as follows: Rigid tonsil tip, FR18, FR14, FR8 and FR6 (2 each).

4. Patient assessment equipment.

- a. Stethoscope in adult size (1).
- b. Stethoscope in pediatric size (1).
- c. Stethoscopes in infant and neonate sizes (2 each).
- d. Sphygmomanometer in child, adult, and large adult sizes (1 each).
- e. Sphygmomanometer in infant size (2).

5. Dressing and supplies.

- a. First aid kit of durable construction and suitably equipped. The contents of this kit may be used to satisfy these supply requirements completely or in part (1).
- b. Trauma dressings, a minimum of 8" x 10" - 5/8 ply when folded, sterile and individually wrapped (4).
- c. 4" x 4" gauze pads, sterile and individually wrapped (24).

- d. Occlusive dressings, sterile 3" x 8" or larger (4).
 - e. Roller or conforming gauze of assorted widths (12).
 - f. Medical adhesive tape, rolls of 1" and 2" (4).
 - g. Trauma scissors (1).
 - h. Alcohol preps (12).
 - i. Emesis basin containers or equivalents (2).
 - j. Sterile normal saline for irrigation, 1000 ml containers (or equivalent volume in other container sizes) (4).
6. Obstetrical kit (2). It must contain the following:
- a. Pairs of sterile surgical gloves (2).
 - b. Scissors or other cutting instrument (1).
 - c. Umbilical cord ties (10" long) or disposable cord clamps (4).
 - d. Sanitary pads (1).
 - e. Cloth or disposable hand towels (2).
 - f. Soft-tipped bulb syringe (1).
7. Personal protection equipment.
- a. Waterless antiseptic hand wash (1).
 - b. Exam gloves, nonsterile, pairs in sizes small through extra large (10 each).
 - c. Disposable gowns or coveralls, each in assorted sizes if not one size fits all style (4).
 - d. Face shield or eyewear (4).
 - e. Infectious waste trash bags (4).
8. Linen and bedding.
- a. Towels, cloth (2).
 - b. Sheets (4).
 - c. Blankets (2).
9. Splints and immobilization devices.
- a. Rigid cervical collars in sizes small adult, medium adult, large adult, and pediatric (2 each). If adjustable type collars are used, then a minimum of three are sufficient.
 - b. Pediatric immobilization device (1).
10. Safety equipment.
- a. "D" cell [battery] or larger flashlight (2).
 - b. Five-pound Class ABC or equivalent fire extinguisher securely mounted in the vehicle in a quick release bracket. One must be accessible to the patient compartment (2).
 - c. Safety apparel (2).
 - d. Sharps container, mounted or commercially secured (1).
 - e. "No Smoking" sign located in the patient compartment (1).
11. Tools and hazard warning devices.
- a. Adjustable wrench, 10" (1).
 - b. Screwdriver, regular #1 size blade (1).
 - c. Screwdriver, Phillips #1 size blade (1).
 - d. Spring loaded center punch (1).
 - e. Hazard warning devices (reflective cone, triangle or approved equivalent) (3 each).
 - f. Current USDOT approved Emergency Response Guidebook (1).
- D. Advanced life support equipment package.
1. [~~EMT-enhanced~~ EMT-Enhanced] package.
- a. Drug kit with all controlled drugs authorized for use by the EMS agency's EMT-Enhanced personnel and other appropriately certified advanced level personnel. The drug kit may contain additional drugs if the kit is a standardized box utilized by multiple EMS agencies operating under a joint drug exchange program (1).
 - b. Assorted intravenous, intramuscular, subcutaneous, and other drug delivery devices and supplies as specified by the agency OMD (1).
2. [~~Advanced~~ EMT/EMT Intermediate/Paramedic Advanced-EMT/Intermediate/Paramedic] package.
- a. Electrocardiogram (ECG) monitor and manual defibrillator capable of synchronized cardioversion and noninvasive external pacing with capability for monitoring and defibrillating adult and pediatric patients (1).
 - b. ECG monitoring electrodes in adult and pediatric sizes as required by device used. (2 [~~set~~ sets] each).
 - c. Defibrillation and pacing electrodes in adult and pediatric sizes as required by device used (2 [~~set~~ sets] each).
 - d. Drug kit with all controlled drugs authorized for use by the EMS agency's Advanced EMT, [~~EMT-Intermediate~~ Intermediate], [~~EMT-Paramedic~~ Paramedic] and other authorized licensed personnel. The drug kit may contain additional drugs if the kit is a standardized box utilized by multiple EMS agencies operating under a joint drug exchange program (1).
 - e. Assorted intravenous, intramuscular, subcutaneous, and other drug delivery devices and supplies as specified by the agency OMD (1).
 - f. Pediatric assessment guides.
3. Neonatal ambulance.
- a. ECG monitor and manual defibrillator capable of synchronized cardioversion and noninvasive external pacing with capability for monitoring and defibrillating adult and pediatric patients (1).
 - b. ECG monitoring electrodes in infant size as required by device used (2 sets).
 - c. Defibrillation and pacing electrodes in adult and pediatric sizes as required by device used (2 [~~set~~ sets] each).

Regulations

d. Drug kit with all controlled drugs authorized for use by the EMS agency's Advanced EMT, [~~EMT-Intermediate~~ Intermediate], [~~EMT-Paramedic~~ Paramedic] and other authorized licensed personnel. The drug kit may contain additional drugs if the kit is a standardized box utilized by multiple EMS agencies operating under a joint drug exchange program (1).

e. Assorted intravenous, intramuscular, subcutaneous, and other drug delivery devices and supplies as specified by the agency OMD (1).

4. Advanced airway equipment (EMT-Enhanced, Advanced EMT, [~~EMT-Intermediate/Paramedic~~ Intermediate/Paramedic] package).

a. Secondary airway device (e.g., combitube type or supra-glottic devices) or laryngeal mask airway (LMA) [~~(1)~~ (one)].

b. Intubation kit to include all of the following items as indicated:

(1) Laryngoscope handle with two sets of batteries, adult and pediatric blades in sizes 0-4 (1 set each).

(2) Magill forceps in adult and pediatric sizes (1 each).

(3) Single use disposable endotracheal tubes in sizes 8.0, 7.0, 6.0, 5.0, 4.0, 3.0, and 2.5m or equivalent sizes (2 each).

(4) Rigid adult stylettes (2).

(5) 10 cc disposable syringes (2).

(6) 5 ml of water soluble surgical lubricant (1).

(7) Secondary confirmation device such as esophageal detection devices, colorimetric evaluation devices, or equivalent (2).

5. Advanced airway neonatal equipment. Intubation kit to include all of the following items as indicated:

a. Laryngoscope handle with two sets of batteries, blades in sizes 0-1 (1 set each).

b. Single-use disposable endotracheal tubes in sizes 4.0, 3.0, and 2.5mm or equivalent sizes (2 each).

c. 10 cc disposable syringes (2).

d. 5 ml of water soluble surgical lubricant (1).

e. Secondary confirmation device such as esophageal detection devices, colorimetric evaluation devices, or equivalent (2).

Article 4

Air Medical Regulations, Rotor and Fixed Wing Operations

12VAC5-31-870 to 12VAC5-31-890. [~~Reserved~~ Application for agency licensure.

A. General provisions. Air medical public service agencies will meet or exceed Federal Aviation Regulations, 14 CFR Part 91, and commercial operators will meet or exceed 14 CFR Part 135.

B. Interruption of service (rotor wing only). The air medical service shall notify the Office of EMS of temporary discontinuation of service from any base expected to last 24 hours or greater.

12VAC5-31-875. Operations and safety.

Operational policies must be present to address the following areas pursuant to medical flight personnel:

1. Hearing protection.

2. Protective clothing and dress codes relative to:

a. Mission type; and

b. Infection control.

3. Flight status during pregnancy.

4. Flight status during acute illness.

5. Flight status while taking medications.

12VAC5-31-880. [~~Reserved~~ Air medical service personnel classifications.

Air medical service personnel classifications are as follows:

1. Air medical crew (rotary).

a. A pilot-in-command in accordance with current [~~FAA~~ Federal Aviation Administration (FAA)] requirements.

b. An attendant-in-charge shall be an air medical specialist who must be one of the following:

(1) [~~A physician~~ Physician];

(2) [~~A registered~~ Registered] nurse or physician assistant [,] licensed for a minimum of two years with specialized air medical training and possessing the equivalent [~~skills of an Emergency Medical Technician-Paramedic~~ training as identified in 12VAC5-31-885];

(3) [~~An Emergency Medical Technician-Paramedic~~ Paramedic], certified for a minimum of two years with specialized air medical training; or

(4) [~~Any other~~ Other] health care personnel with equivalent training or experience as approved by the Office of EMS.

c. An attendant shall [~~be at a minimum a certified EMT-Paramedic~~ have specialized air training as identified in 12VAC5-31-885].

2. Air medical crew (fixed wing).

a. A pilot-in-command in accordance with current FAA requirements.

b. An attendant-in-charge shall be an air medical specialist who shall be one of the following:

(1) A physician;

(2) A registered nurse or physician assistant licensed for a minimum of two years with specialized air medical training;

(3) An [~~Emergency Medical Technician~~ emergency medical technician] certified for a minimum of two years with specialized air medical training; or

(4) Any other health care personnel with equivalent training or experience as approved by the Office of EMS.

c. An attendant shall be [~~an Emergency Medical Technician Paramedic~~ a Paramedic] or an equivalent approved by the Office of EMS.

3. Specialty care mission providers.

a. The agency shall have in place policies that identify the crew composition for each specialty mission type that it is willing to perform and are consistent with industry standards. These policies shall be approved by the agency OMD and have a method of continuously monitoring adherence to those policies.

b. The specialty care team must minimally consist of a physician, registered nurse or other [~~specialist specialists~~] as the primary caregiver whose expertise must be consistent with the needs of the patient, per the agency's policy required in subdivision 3 a of this section.

c. All specialty care team members must have received an orientation to the air medical service [~~which that~~] includes (i) in-flight treatment protocols, (ii) general aircraft safety and emergency procedures, (iii) operational policies, [~~and~~] (iv) infection control, [~~and~~] (v) altitude physiology [~~and emergency procedures~~] annually.

d. Specialty care mission personnel must be accompanied by at least one regularly scheduled air medical staff member of the air medical service.

4. Staffing for specific mission types.

a. Prehospital scene responses - consists of the pilot-in-command, attendant-in-charge who shall be [~~an EMT-Paramedic~~ a Paramedic] and an attendant.

b. Inter-facility transports.

(1) ALS - consists of the pilot-in-command, attendant-in-charge, and an attendant.

(2) For fixed wing, the attendant may be a BLS provider.

(3) Critical care - consists of the pilot-in-command, attendant-in-charge, and an attendant. A member of the medical crew shall be a physician, physician assistant, or a registered nurse.

12VAC5-31-885. Training.

A. The air medical agency shall have a planned and structured program in which all medical transport personnel must participate. Competency and currency must be ensured and documented through relevant continuing education programs or certification programs listed in this section. Training and continuing education programs will be guided by each air medical transport service's mission statement and medical direction. Measurable objectives shall be developed and documented for each experience.

B. Pilot initial training requirements. In addition to FAA requirements pilots must have the following:

1. Orientation to the hospital or health care system associated with the air medical service.

2. Orientation to infection control, medical systems installed on the aircraft, and patient loading and unloading procedures.

3. Orientation to the EMS and public service agencies unique to the specific coverage area (fixed wing excluded).

C. Registered nurse training requirements.

1. Valid unrestricted license to practice nursing in Virginia.

2. Cardio-Pulmonary Resuscitation (CPR) - documented evidence of current CPR certification according to the American Heart Association (AHA) standards or equivalent as approved by OEMS.

3. Advanced Cardiac Life Support (ACLS) - documented evidence of current ACLS according to the AHA or equivalent as approved by OEMS.

4. Pediatric Advanced Life Support (PALS) - documented evidence of current PALS or equivalent education.

5. Neonatal Resuscitation Program (NRP) - documented evidence of current NRP according to the AHA or American Academy of Pediatrics (AAP) or equivalent education within one year of hire. (fixed wing, mission specific).

6. [~~EMT-B~~ EMT] or equivalent education within six months of hire (fixed wing excluded).

D. Paramedic training requirements.

1. Valid Virginia Paramedic certification.

2. CPR - documented evidence of current CPR certification according to the AHA standards or equivalent as approved by OEMS.

3. ACLS - documented evidence of current ACLS certification according to the AHA or equivalent as approved by OEMS.

4. PALS - documented evidence of current PALS or equivalent education.

5. NRP - documented evidence of current NRP according to the AHA or AAP or equivalent education. (fixed wing, mission specific).

E. Minimum initial training for air medical crew members.

1. Didactic component of initial education - shall be specific for the mission statement and scope of care of the medical transport service. Measurable objectives shall be developed and documented for each experience by the program.

Minimum training for all air medical crew members, including the OMD, shall include:

a. Altitude physiology and stressors of flight.

b. Air medical resource management.

Regulations

c. Aviation - aircraft orientation, safety, in-flight procedures, and general aircraft safety including depressurization procedures for fixed wing.

d. Cardiology.

e. Disaster and triage.

f. EMS radio communications.

g. Hazardous materials recognition and response.

h. External pacemakers, automatic implantable cardiac defibrillator (AICD), and central lines.

i. High risk obstetric emergencies (bleeding, medical, trauma).

j. Infection control.

k. Mechanical ventilation and respiratory physiology for adult, pediatric, and neonatal patients as it relates to the mission statement and scope of care of the medical transport service specific to the equipment.

l. Metabolic or endocrine emergencies.

m. Multi-trauma (adult trauma and burns).

n. Neuro.

o. Pediatric medical emergencies.

p. Pediatric trauma.

q. Pharmacology (specialty application).

r. Quality management - didactic education that supports the medical transport services mission statement and scope of care of the medical transport service.

s. Respiratory emergencies.

t. Scene management, rescue and extrication.

u. Survival training.

v. Toxicology.

2. Additional training for critical care air medical crew members, including paramedics, RNs, MDs, and the air medical services OMD shall include within their mission profile:

a. Hemodynamic monitoring.

b. Intra-aortic balloon pump.

c. Pulmonary and arterial catheters.

d. Ventricular assist devices.

e. Extracorporeal membrane oxygenation (ECMO).

3. Clinical component of initial education. Clinical experiences shall include the following points (experiences shall be specific to the mission statement and scope of care of the medical transport service). Measurable objectives shall be developed and documented for each experience listed below reflecting hands-on experience versus observation only (fixed wing excluded).

a. Advanced airway management.

b. Basic care for pediatrics, neonatal and obstetrics.

c. Critical care.

d. Emergency care.

e. Invasive procedures on mannequin equivalent for practicing invasive procedures.

f. Pediatric critical care.

g. Prehospital care.

4. Annual continuing education requirements. Continuing education or staff development programs shall include reviews or updates for all air medical crew members and the agency OMD on the following areas:

a. Aviation safety issues.

b. Altitude physiology.

c. Air medical resource management.

d. Hazardous materials recognition and response.

e. Invasive procedures labs.

f. Management of emergency or critical care adults, pediatric, and neonatal patients (medical and trauma).

g. Survival training.

12VAC5-31-890. [Reserved] Equipment.

A. Aircraft equipment.

1. General aircraft inspection requirements.

a. Current FAA documented compliance.

b. Current EMS permit posted.

c. Interior and supplies clean and sanitary.

d. Exterior clean.

e. Equipment in good working order.

f. Current USDOT Emergency Response Book.

2. Aircraft warning devices.

180 degree controllable searchlight 400,000 candle power (fixed wing excluded).

3. Design and dimensions.

a. All interior edges and corners padded.

b. Surfaces easily cleaned and nonstainable.

c. Security restraints for stretcher to aircraft.

d. Climate controlled environment for operator and patient care compartments.

e. The service's mission and ability to transport two or more patients shall not compromise the airway or stabilization or the ability to perform emergency procedures on any on-board patient.

4. Aircraft markings.

a. Lettering is minimum three inches in height.

b. Name of agency aircraft is permitted on both sides, three inches in height, contrasting color.

5. Aircraft communications.

a. The aircraft shall be equipped with a functioning emergency locator transmitter (ELT).

- b. Attendant-in-charge to medical control (fixed wing excluded).
- c. Patient compartment to pilot.
- d. The pilot must be able to control and override radio transmissions from the cockpit in the event of an emergency situation.
- e. The flight crew must be able to communicate internally.
- f. Cellular phones may not be used to satisfy these requirements.

6. Aircraft safety equipment.

- a. Head strike envelope - Helmets shall be worn by all routine flight crews and scheduled specialty teams.
- b. Seatbelts for all occupants.
- c. Flashlight.
- d. Fire extinguisher mounted in a quick release bracket or other FAA approved fire suppression system.
- e. All items secured to prevent movement while the air ambulance is in motion.
- f. "No Smoking" sign posted.
- g. The aircraft shall be equipped with survival gear specific to the coverage area and the number of occupants.
- h. Survival kit to include signaling capabilities and shelter.
- i. Safety apparel. (3 minimum)
- j. All items shall be capable of being secured.

B. Medical equipment. Any in-service air ambulance shall be configured in such a way that the medical transport personnel can provide patient care consistent with the mission statement and scope of care of the medical transport service.

1. General patient care equipment.

- a. A minimum of one stretcher shall be provided that can be carried to the patient and properly secured to the aircraft [as defined in FAR 27.785].
 - (1) The stretcher shall be age appropriate and full length in the supine position.
 - (2) The stretcher shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If a backboard or equivalent device is required to achieve this, such device will be readily available. (1)
 - (3) The head of the stretcher shall be capable of being elevated for patient care and comfort.
- b. Biohazard container for contaminated sharp objects (ALS), secured or mounted. (1)
- c. Waterless antiseptic hand wash. (1)
- d. Exam gloves, nonsterile, pairs in sizes small through extra large (small, medium, large, and extra large), if not one size fits all. (5)

- e. Face shield or eyewear. (2)
- f. Infectious waste trash bags. (2)
- g. Linen: towels, blankets, and sheets. (2 each)

2. Basic life support air ambulance equipment requirements.

- a. Roller or conforming gauze of assorted widths. (12)
- b. Medical adhesive tape, rolls of 1" and 2". (4)
- c. Trauma scissors. (1)
- d. Trauma dressings, minimum of 8" x 10"-5/8 ply, sterile, individually wrapped. (2)
- e. Sterile 4" x 4" gauze pads, individually wrapped. (10)
- f. Occlusive dressings, sterile 3" x 8" or larger. (2)
- g. Oropharyngeal airways, one of each sizes 0-5 wrapped or in closed container. (1 set)
- h. Nasopharyngeal airways set of four, varied sizes, with water soluble lubricant. (1 set)
- i. Bag valve mask with oxygen attachment, adult size, with transparent mask. (1)
- j. Bag valve mask with oxygen attachment, child size, with transparent mask. (1)
- k. BVM infant mask. (1)
- l. Pocket mask. (1)
- m. Portable O₂ unit containing a quantity of oxygen sufficient to supply the patient at the appropriate flow rate for the period of time it is anticipated oxygen will be needed but not less than 10 liters per minute for 15 minutes. The unit must be manually controlled and have an approved flow meter.
- n. Installed oxygen system containing a sufficient quantity of oxygen to supply two patient flowmeters at the approximate flow rate for the period of time it is anticipated oxygen will be needed, but not less than 10 liters per minute for 30 minutes. This unit must be capable of being manually controlled, have two flowmeters, and have an attachment available for a single use humidification device.
- o. O₂ high concentrate mask and cannula, child and adult. (2 each)
- ~~[p. Pocket mask. (1)~~
- ~~q.] Installed suction apparatus capable of providing a minimum of 20 minutes of continuous operation. (1)~~
- ~~[r. q.] Battery powered portable suction apparatus. A manually powered device does not meet this requirement. (1)~~
- ~~[s. r.] Suction catheters, wrapped, rigid tonsil tip, FR18, FR14, FR8 and FR6. (2 each)~~
- ~~[t. s.] Stethoscope, adult, and pediatric sizes. (1 each)~~
- ~~[u. t.] BP cuff, pediatric, adult, and large adult. (1 each)~~

Regulations

~~[v. u.]~~ Obstetrics kit containing sterile surgical gloves (2 pair), scissors or other cutting instrument (1), umbilical cord ties (10" long) or disposable cord clamps (4), sanitary pad (1), cloth or disposable hand towels (2), and soft tip bulb syringe (1).

~~[w. v.]~~ Emesis basin or equivalent container. (2)

~~[x. w.]~~ Removable stretcher or spine board with a minimum of 3 restraint straps and manufacturer approved aircraft mounting device. (1)

~~[x. Removable stretcher or spine board with a minimum of 3 restraint straps and manufacturer approved aircraft mounting device. (1)~~

~~y. x.]~~ Rigid cervical collars in small adult, medium adult, large adult, and pediatric sizes (1 each). If adjustable adult collars are utilized, a minimum of three.

~~[z. y.]~~ Cervical immobilization device. (1)

~~[aa. z.]~~ Pediatric immobilization device. (1)

~~[bb. aa.]~~ Immobilization devices for upper and lower extremities. (1 each)

~~[ee. bb.]~~ First aid kit of durable construction and suitably equipped. The contents of this kit may be used to satisfy these supply requirements completely or in part. (1)

3. Advanced life support air ambulance equipment requirements.

a. A drug kit with controlled medications authorized by the agency's OMD for use by paramedic personnel. (1)

b. Lockable storage for drug kit and supplies.

c. All drugs shall be in date.

d. Intubation kit with two sets of batteries, adult and pediatric blades and handles (sizes 0-4) (1 set), Magill forceps in adult and pediatric sizes (1 each), disposable tubes in sizes 8.0, 7.0, 6.0, 5.0, 4.0, 3.0, 2.5, or equivalent (2 each), rigid adult stylettes (2 each), 10cc disposable syringe (2), and 5ml of water soluble lubricant (1).

e. There shall be an approved secondary airway device as prescribed by the agency's OMD. (1)

f. Assorted IV, IM, subcutaneous, and other drug and IV fluid administration delivery devices and supplies as specified by agency's OMD.

g. IV infusion pump. (1)

h. Defibrillator, cardioversion and external pacing capable. (1)

i. EKG monitor. (1)

j. Monitor electrodes, with adult and pediatric defibrillation pads. (2 each)

k. Adult and pediatric external pacing pads. (2 each)

l. Noninvasive blood pressure monitoring device capable of adult and pediatric use. (1)

m. Continuous end tidal CO₂ monitoring device. (1)

n. Pulse oximetry monitoring device. (1)

4. Critical care package air ambulance equipment requirements. Items listed are in addition to the air ambulance ALS package.

a. Invasive pressure monitoring equipment. (1)

b. Internal pacemaker and pulse generator immediately available. (1)

c. Ventilator as appropriate for mission.

d. IV infusion pumps. (2)

Article 4 5

EMS Personnel Requirements and Standard of Conduct

12VAC5-31-900. General requirements.

EMS personnel shall meet and maintain compliance with the following general requirements:

1. Be a minimum of 16 years of age. (An EMS agency may have associated personnel who are less than 16 years of age. This person is not allowed to participate in any EMS response, or ~~any training program~~ or other activity that may involve exposure to a communicable disease, hazardous chemical or other risk of serious injury.)

2. Be clean and neat in appearance;

3. Be proficient in reading, writing and speaking the English language in order to clearly communicate with a patient, family or bystander to determine a chief complaint, nature of illness, mechanism of injury and/or assess signs and symptoms.

4. Have no physical or mental impairment that would render him unable to perform all practical skills required for that level of training. Physical and mental performance skills include the ability of the individual to function and communicate independently to perform appropriate patient care, physical assessments and treatments without the need for an assistant.

5. Provide to the Office of EMS within 15 days, any change in contact information to include mailing address, electronic notification such as email, or telephone number.

12VAC5-31-910. Criminal or enforcement history.

~~EMS personnel shall meet and maintain compliance with the following general requirements~~ A. General denial. Application for or certification of individuals convicted of certain crimes present an unreasonable risk to public health and safety. Thus, applications for certification by individuals convicted of the following crimes will be denied in all cases:

1. ~~Has never been convicted or found guilty of any crime~~ Felonies involving sexual misconduct where the ~~lack of affirmative~~ victim's failure to affirmatively consent by the ~~victim~~ is an element of the crime, such as forcible rape.

2. ~~Has never been convicted of a felony~~ Felonies involving the sexual or physical abuse of children, the elderly or the infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual

display, incest involving a child, or assault on an elderly or infirm person.

~~3. Has never been convicted or found guilty of any crime (including abuse, neglect, theft from, or financial exploitation) of a person entrusted to his care or protection in which the victim is a an out-of-hospital patient or is a patient or resident of a health care healthcare facility including abuse of, neglect of, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant.~~

~~4. Serious crimes of violence against persons such as assault or battery with a dangerous weapon, aggravated assault and battery, murder or attempted murder, manslaughter except involuntary manslaughter, kidnapping, robbery of any degree, or arson.~~

~~5. Has been subject to a permanent revocation of license or certification by another state EMS office or other recognized state or national healthcare provider licensing or certifying body.~~

B. Presumptive denial. Application for or current certification by individuals in the following categories will be denied except in extraordinary circumstances, and then will be granted only if the applicant or provider establishes by clear and convincing evidence that certification will not jeopardize public health and safety.

1. Application for certification by individuals who have been convicted of any crime and who are currently incarcerated, on work release, on probation, or on parole.

2. Application for or certification by individuals convicted of crimes in the following categories unless at least five years have passed since the conviction or five years have passed since release from custodial confinement whichever occurs later:

a. Crimes involving controlled substances or synthetics, including unlawful possession or distribution or intent to distribute unlawfully Schedule I through V drugs as defined by the Virginia Drug Control Act (§ 54.1-3400 seq. of the Code of Virginia).

b. Serious crimes against property, such as grand larceny, burglary, embezzlement, or insurance fraud.

c. Any other crime involving sexual misconduct.

~~4. Has never been convicted or found guilty of any crime involving the use, possession, or distribution of illegal drugs except that the person is eligible for affiliation five years after the date of final release if no additional crimes of this type have been committed during that time.~~

~~5. Has never been convicted or found guilty of any other act that is a felony except that the felon is eligible for affiliation five years after the date of final release if no additional felonies have been committed during that time.~~

~~6. 3. Is not currently under any disciplinary or enforcement action from another state EMS office or other recognized~~

state or national healthcare provider licensing or certifying body. Personnel subject to these disciplinary or enforcement actions may be eligible for certification provided there have been no further disciplinary or enforcement actions for five years prior to application for certification in Virginia.

~~7. Has never been subject to a permanent revocation of license or certification by another state EMS office or other recognized state or national healthcare provider licensing or certifying body.~~

B- C. Permitted vehicle operations. Agencies are responsible for the monitoring of compliance with all driving criteria set forth in these regulations.

1. Personnel operating OEMS permitted vehicles shall possess a valid operator's or driver's license from his state of residence.

2. Personnel operating OEMS permitted vehicles shall not have been convicted on any charge [~~that is a felony~~] as described in subsections A and B of this section.

3. Personnel who as the proximate result of having operated an OEMS permitted vehicle are (i) convicted of driving under the influence of alcohol or drugs or (ii) sentenced or assigned to any alcohol safety action program or any driver alcohol rehabilitation program pursuant to the Code of Virginia shall be prohibited from operating any OEMS permitted vehicle. Personnel or agencies shall be required to report these situations to OEMS.

4. Agencies shall develop and maintain policies that address driver eligibility, record review, and vehicle operation. Such policies must minimally address:

a. Driving education or training required for personnel to include information on the agency's policy content;

b. Safe operation of vehicles;

c. Agency driving record review procedures;

d. Requirement for immediate agency notification by personnel regarding any convictions, regardless of the state where an infraction occurred or changes to his operator's or driver's license. The immediate agency notification shall be defined as no more than 10 calendar days following the conviction date; and

e. Identification of internal mechanisms regarding agency level actions for driver penalties (i.e., probation or suspension of driving privileges).

~~EMS personnel may not act as an operator of an EMS vehicle if he has been convicted upon a charge of driving under the influence of alcohol or drugs, convicted of a felony or assigned to any alcohol safety action program or driver alcohol rehabilitation program pursuant to § 18.2-271.1 of the Code of Virginia, hit and run, or operating on a suspended or revoked license within the past five years. A person having any of these convictions in Virginia or another state may be eligible for reinstatement as an operator after five years and~~

Regulations

~~after successful completion of an approved emergency vehicle operator's course (EVOC) within the year prior to reinstatement.~~

~~↪ D.~~ All references to criminal acts or convictions under this section refer to substantially similar laws or regulations of any other state or the United States. Convictions include prior adult convictions, juvenile convictions and adjudications of delinquency based on an offense that would have been, at the time of conviction, a felony conviction if committed by an adult within or outside Virginia.

E. Agencies shall submit a report regarding items in this section to OEMS upon request.

12VAC5-31-940. Drugs and substance abuse.

A. EMS personnel may not be under the influence of any drugs or intoxicating substances that impairs [his their] ability to provide patient care or operate a motor vehicle while on duty or when responding or assisting in the care of a patient.

B. The EMS agency shall have a drug and substance abuse policy which includes a process for testing for drugs or intoxicating substances.

12VAC5-31-950. Disclosure of patient information.

EMS personnel may not share or disclose medical information concerning the names, treatments, conditions or medical history of patients treated. This information must be maintained as confidential, except:

1. To provide a copy of the prehospital patient care report completed by the attendant-in-charge to the receiving facility for each patient treated or transported;
2. To provide a copy of the prehospital patient care report completed by the attendant-in-charge for each patient treated to the agency that responds and transports the patients. The prehospital patient care report copy ~~may~~ shall be released to the transporting agency upon request after the patient transport to complete the transporting agency's records of all care provided to the patients transported;
3. To provide for the continuing medical care of the patient;
4. To the extent necessary and authorized by the patient or his representative in order to collect insurance payments due;
5. To provide continuing medical education of EMS personnel who provide the care or assistance when patient identifiers have been removed; or
6. To assist investigations conducted by the board, department or Office of EMS.

12VAC5-31-960. Misrepresentation of qualifications.

EMS personnel ~~may~~ shall not misrepresent themselves as authorized to perform a level of care for which they are not currently qualified, licensed or certified. This requirement does not prohibit the performance of patient care by students

currently enrolled in a training program when properly supervised as required by these regulations.

12VAC5-31-970. Interference or obstruction of investigation.

Any EMS agency, personnel, or entity who attempts knowingly or willfully to interfere or obstruct an Office of EMS investigation may be subject to enforcement action.

12VAC5-31-1010. Misappropriation or theft of medications drugs.

EMS personnel may not possess, remove, use or administer any controlled substances, ~~medication drug~~ delivery devices or other regulated medical devices from any EMS agency, EMS vehicle, health care facility, academic institution or other location without proper authorization.

12VAC5-31-1030. Sexual harassment.

EMS personnel may not engage in sexual harassment ~~of patients or coworkers~~. Sexual harassment includes making unwelcome sexual advances, requesting sexual favors, and engaging in other verbal or physical conduct of a sexual nature as a condition of:

1. The provision or denial of emergency medical care to a patient;
2. The provision or denial of employment or course advancement;
3. The provision or denial of promotions to a coworker;
4. For the purpose or effect of creating an intimidating, hostile, or offensive environment for the patient or student or unreasonably interfering with a patient's ability to recover; or
5. For the purpose or effect of creating an intimidating, hostile or offensive classroom or working environment or unreasonably interfering with a coworker's or student's ability to perform his work.

12VAC5-31-1040. Operational medical director authorization to practice.

A. EMS personnel as defined in § 54.1-3408 of the Code of Virginia may only provide emergency medical care while acting under the authority of the operational medical director for the EMS agency for which they are affiliated and within the scope of the EMS agency license. Privileges to practice must be on the agency's official stationery or indicated in the agency records which are signed and dated by the OMD.

B. Agencies shall establish a written policy that identifies the selection, response criteria, utilization, and approval process for (i) EMS personnel to carry and administer an epinephrine auto injector or medically accepted equivalent for emergency cases of anaphylactic shock, and (ii) the possession and administration of oxygen carried on personally owned vehicles (POV). The policy shall also include:

1. Annual approval and authorization by EMS agency and OMD.

2. Drug storage criteria to include:

- a. Compliance with all applicable temperature requirements specified by the Virginia Board of Pharmacy.
- b. Requirements that describe how the cylinder or device is to be secured in a manner to prevent any free movement within the occupant or storage compartment of the vehicle.
- c. Evidence of approval by personal vehicle insurance carrier must be on file with EMS agency for all EMS personnel authorized to carry oxygen on personally owned vehicles.

3. The personal vehicle utilized to carry oxygen may be subject to inspection by the Office of EMS.

12VAC5-31-1050. Scope of practice.

EMS personnel shall only perform those procedures, [treatments skills], or techniques for which he is currently licensed or certified, provided that he is acting in accordance with local medical [treatment] protocols and medical direction provided by the OMD of the [licensed] EMS agency with which he is affiliated and [within the scope of the EMS agency licenses] as authorized in the Emergency Medical Services Procedures and Medications Schedule as approved by [OEMS the board].

12VAC5-31-1060. Transport without required personnel. (Repealed.)

~~An EMS provider may provide care in the event that the required EMS personnel do not respond to a call to fully staff the ambulance that has responded to the scene. The circumstances of the call must be documented in writing. Based on circumstances and documentation, the EMS agency or the EMS provider may be subject to enforcement action.~~

12VAC5-31-1140. Provision of patient care documentation.

A. EMS personnel and EMS agencies shall provide the receiving medical facility or transporting EMS agency with a copy of the prehospital patient care report for each patient treated [~~either with the patient or~~ at the time of patient transfer. Should EMS personnel be unable to provide the full prehospital patient care report at the time of patient transfer, EMS personnel shall provide an abbreviated documented report with the critical EMS findings and actions at the time of patient transfer and the full prehospital patient care report shall be provided to the accepting facility] within [24 12] hours.

B. The signature of the [~~medical practitioner, prescriber, as defined in § 54.1-3401 of the Code of Virginia,~~] who assumes responsibility for the patient shall be included on the prehospital patient care report for an incident when a ~~medication drug~~ drug is administered, or self-administration is assisted (excluding oxygen), or an invasive procedure is performed [~~except when standing orders from the OMD allows the administration of the drug or procedure~~]. The

~~medical practitioner's signature shall document that the physician has been notified of the medications administered and procedures performed by the EMS personnel. [EMS personnel shall not infer that the] medical practitioner's [prescriber's signature denotes approval, authorization or verification of compliance with protocol, standing orders or medical control orders.] [~~The provider shall document on the PPCR indicating that the drug given was under the OMD's preapproved protocols for the agency. This includes instances where the patient is not transported or transported by another agency.~~~~

C. EMS personnel shall contact medical control (on line) for approval of drug administration or procedures that are not included in their standing orders as authorized by the agency's OMD. Such events shall require the signature of the authorized practitioner as identified by the Virginia Board of Pharmacy (licensed physician, nurse practitioner, or physician assistant).

The receiving [~~medical practitioner prescriber~~] signature requirement above does not apply to ~~medications~~ drugs that are maintained by EMS personnel during transport of patients between healthcare facilities, provided adequate documentation of ongoing ~~medications~~ drugs are transferred with the patient by the sending facility.

If [a patient is not transported to the hospital or if] the attending [~~medical practitioner prescriber~~] at the hospital refuses to sign the prehospital patient care report, ~~this prehospital patient care report~~ the PPCR shall be signed by the agency's operational medical director within seven days of the [~~administration event~~] and a signed copy delivered to the hospital pharmacy that was responsible for any ~~medication~~ drug kit exchange.

12VAC5-31-1165. EMS agency mutual aid response.

An EMS agency providing resources, certified personnel, permitted vehicles, or equipment as a result of an Emergency Management Assistance Compact (EMAC), Federal Emergency Management Agency (FEMA), or any other out-of-state mutual aid request shall notify OEMS upon commitment of requested resources. Notification by direct verbal communication shall be made to the local OEMS program representative.

12VAC5-31-1210. Nontransport response vehicle staffing.

At a minimum, one person may satisfy both of the following requirements:

- 1. An operator shall at a minimum possess a valid motor vehicle operator's permit issued by Virginia or another state and have successfully completed an approved emergency vehicle operator's course (EVOC) training course or an equivalent.
- 2. Attendant-in-charge shall be currently certified as an EMS first responder, emergency medical responder, or emergency medical technician or an equivalent approved by the Office of EMS.

Regulations

12VAC5-31-1250. Advanced life support vehicle transport.

Advanced life support transport requirements:

1. A ground ambulance equipped with an ALS equipment package. An ALS equipment package may be transferred to a ground ambulance not otherwise equipped to provide the needed level of ALS patient care from another appropriately equipped EMS vehicle. This transfer must include all items required for the type of ALS equipment package that the attendant-in-charge is authorized to use.
2. The attendant-in-charge must be certified as an advanced life support level provider or an equivalent approved by the Office of EMS.
3. An attendant must be certified as an emergency medical technician or an equivalent approved by the Office of EMS in addition to the attendant-in-charge. The attendant must not serve as the attendant-in-charge. An operator may serve as the attendant if certified as an emergency medical technician or an equivalent approved by the Office of EMS.
4. An ALS provider may provide care in the event that the required EMS personnel do not respond to a call to fully staff the ambulance that has responded to the scene. The extenuating circumstances of the call must be documented in writing. Based on extenuating circumstances and documentation, the EMS agency or the EMS provider may be subject to enforcement action.

12VAC5-31-1260. Supplemented transport requirements.

A. Supplemented transports require the following:

1. An ambulance equipped with an ALS intermediate/paramedic equipment package;
2. A determination by the sending physician that the patient's medically necessary care exceeds the scope of practice of available personnel certified at an advanced life support level or an equivalent approved by the Office of EMS; or
3. A determination by the sending physician that the specific equipment needed to care for the patient exceeds that required for a ground ambulance equipped with an ALS Advanced EMT/intermediate/paramedic equipment package.

B. An attendant-in-charge who must be a physician, registered nurse or physician assistant who is trained and experienced in the care and the equipment needed for the patient being transported.

C. An attendant who must be certified as an emergency medical technician or an equivalent approved by the Office of EMS in addition to the attendant-in-charge. The attendant must be a third person who is not the Operator.

D. An EMS agency requested to perform a supplemented transport, is responsible for the following:

1. Obtaining a written statement from the sending physician detailing the specific nature of the patient's medical condition and the medical equipment necessary for the transport. The written statement may be in the form of transport orders documented in the patient's medical record.
2. Verifying that the individual acting as attendant-in-charge for the transport is experienced in the patient care required and the operation of all equipment to be used for the patient to be transported.

An EMS agency requested to perform a supplemented transport shall refuse to perform the transport if compliance with the requirements of this section cannot be satisfied. Refusal to provide the transport must be documented by the EMS agency.

12VAC5-31-1270. Neonatal transport requirements.

A. ~~[Neonatal transports require a neonatal ambulance.]~~ If a ground ambulance is utilized to perform an interfacility neonatal transport, the vehicle must be equipped with the additional items listed in 12VAC5-31-860 C, D 1 and M 3, and D 5 and staffed in compliance with this section.

B. A minimum of three persons is required:

1. An operator who at a minimum possesses a valid motor vehicle operator's permit issued by Virginia or another state, and who has successfully completed an approved emergency vehicle operator's course (EVOC) training course or an equivalent approved by the Office of EMS.
2. An attendant-in-charge who must be one of the following:
 - a. Physician;
 - b. Registered nurse or ~~physician's~~ physician assistant, licensed for a minimum of two years, with specialized neonatal transport training; or
 - c. Other health care personnel with equivalent training or experience as approved by the Office of EMS.
3. An attendant. The operator, attendant-in-charge or attendant must be certified as an emergency medical technician or an equivalent approved by the Office of EMS.

12VAC5-31-1280. Air ambulance transport requirements. (Repealed.)

~~An air ambulance transport requires a minimum of three persons, the aircraft flight crew and two air medical personnel.~~

~~1. Rotary Wing Air Ambulance.~~

- ~~a. A pilot in command shall meet all the requirements of the Federal Aviation Administration, including possession of a valid commercial pilot's certificate for rotor craft and must have a minimum of 1,000 hours in category, of which a minimum of 200 hours must be nighttime.~~

b. An attendant in charge shall be an air medical specialist who must be one of the following:

- (1) Physician;
- (2) Registered nurse or physician's assistant, licensed for a minimum of two years with specialized air medical training and possessing the equivalent skills of an emergency medical technician—paramedic;
- (3) Emergency medical technician—paramedic, certified for a minimum of two years with specialized air medical training; or
- (4) Other health care personnel with equivalent training or experience as approved by the Office of EMS.

c. An attendant who shall be an emergency medical technician or an equivalent approved by the Office of EMS.

d. The attendant in charge and the attendant shall not be members of the required flight crew.

2. Fixed-Wing Air Ambulance.

a. A pilot in command shall meet all the requirements of the Federal Aviation Administration Regulations Part 135.

b. An attendant in charge who at a minimum shall be an air medical specialist who shall be one of the following:

- (1) A physician;
- (2) A registered nurse or physician's assistant, licensed for a minimum of two years with specialized air medical training and possessing the equivalent skills of an emergency medical technician—paramedic;
- (3) An emergency medical technician—paramedic, certified for a minimum of two years with specialized air medical training; or
- (4) Any other health care personnel with equivalent training or experience as approved by the Office of EMS.

c. An attendant shall be an emergency medical technician or an equivalent approved by the Office of EMS.

d. The attendant in charge and the attendant shall not be members of the required flight crew.

12VAC5-31-1290. Exemptions. (Repealed.)

A. On January 1, 2003, an EMS vehicle must meet the requirements for vehicle construction and required markings in effect at the time the EMS vehicle was permitted. This exception does not apply to the medication kit storage requirements or if the EMS vehicle permit is surrendered or expires.

B. An EMS vehicle permitted before January 1, 2003, is exempted as follows:

- 1. From 12VAC5 31 860 A (AED requirement) and 12VAC5 31 860 L (ECG monitor/manual defibrillator with synchronized cardioversion and non-invasive pacing requirement) until January 1, 2004.

2. From 12VAC5 31 760 (EMS vehicle communications requirement) until January 1, 2004. The communications requirements of 12VAC5 30 200 B e shall remain in effect until January 1, 2004.

C. On January 1, 2003, an EMS vehicle may be reclassified as follows:

- 1. An immediate response vehicle (Class A) becomes a nontransport response vehicle.
- 2. A basic life support vehicle (Class B) or an advanced life support vehicle (Class C) becomes a ground ambulance.
- 3. A specialized life support transport unit (Class D) becomes a ground ambulance unless the EMS agency applies for an EMS vehicle permit as a neonatal ambulance.
- 4. A life support vehicle for air transportation (Class F) becomes an air ambulance.

D. Existing forms, licenses, certificates, and other materials may be used by the Office of EMS or modified as considered necessary by the Office of EMS until existing stocks are depleted.

E. Current specialized air medical training programs as approved by the Office of EMS comply with these regulations:

F. A designated emergency response agency shall comply with 12VAC5 31 620 (staffing capability) by January 1, 2004.

Part III

EMS Education and Certification

12VAC5-31-1300. Applicability. (Repealed.)

This part applies to initial, refresher or bridge certification courses and EMS continuing education (CE) programs.

Part III

EMS Education and Certification

Article 1

Certification Levels

12VAC5-31-1305. EMS First Responder (FR).

[This section will expire on September 10, 2016.]

The certification is issued for a period of four years from the end of the month of issuance.

12VAC5-31-1307. Emergency Medical Responder (EMR).

The certification is issued for a period of four years from the end of the month of issuance.

12VAC5-31-1310. BLS certification programs. (Repealed.)

A. BLS certification programs authorized for issuance of certification in Virginia are:

- 1. EMS First Responder;
- 2. EMS First Responder Bridge to EMT; and
- 3. Emergency Medical Technician (EMT).

Regulations

~~B. A course coordinator for a BLS certification program must be an EMT instructor.~~

~~C. A course coordinator for a BLS certification program must use the following curriculum:~~

- ~~1. The Virginia standard curriculum for the EMS first responder for an EMS First Responder certification program.~~
- ~~2. The U.S. Department of Transportation National Standard Curriculum for the EMT Basic for an EMS First Responder Bridge certification program or an EMT certification program.~~

12VAC5-31-1315. Emergency Medical Technician (EMT).

The certification is issued for a period of four years from the end of the month of issuance.

12VAC5-31-1320. ALS certification programs. (Repealed.)

~~A. ALS certification programs authorized for issuance of certification in Virginia are:~~

- ~~1. EMT Enhanced;~~
- ~~2. EMT Enhanced to EMT Intermediate Bridge;~~
- ~~3. EMT Intermediate;~~
- ~~4. EMT Intermediate to EMT Paramedic Bridge;~~
- ~~5. Registered Nurse to Paramedic Bridge; and~~
- ~~6. EMT Paramedic.~~

~~B. Transitional ALS certification programs that are authorized for issuance of certification in Virginia for six years from January 1, 2003, are:~~

- ~~1. EMT Shock Trauma to EMT Enhanced.~~
- ~~2. EMT Cardiac to EMT Intermediate.~~
 - ~~a. After recertifying once at his current certification level, an EMS provider with EMT Shock Trauma or EMT Cardiac certification shall complete the designated "transition" program to certify at the corresponding replacement certification level listed in this subsection.~~
 - ~~b. An EMS provider in an initial or bridge EMT Shock Trauma or EMT Cardiac certification program who completes the program and attains certification shall complete the designated "transition" program to certify at the corresponding replacement certification level listed in this subsection.~~
 - ~~c. An EMS provider with EMT Shock Trauma or EMT Cardiac certification shall complete the requirements for the designated "transition" certification level by January 1, 2009.~~

~~C. A course coordinator for an ALS certification program shall be an ALS coordinator who is certified or licensed at or above the certification level of the course to be announced.~~

~~D. A course coordinator for an ALS certification program shall use the following curriculum:~~

~~1. The Virginia Standard Curriculum for the EMT-Enhanced or an equivalent approved by the Office of EMS for an EMT-Enhanced certification program.~~

~~2. The U.S. Department of Transportation National Standard Curriculum for the EMT-Intermediate or a bridge certification program approved by the Office of EMS for an EMT-Enhanced to EMT-Intermediate Bridge or an EMT-Intermediate certification program.~~

~~3. The U.S. Department of Transportation National Standard Curriculum for the EMT-Paramedic or a bridge certification program approved by the Office of EMS for an EMT-Intermediate to EMT-Paramedic Bridge, a Registered Nurse to EMT-Paramedic Bridge or EMT-Paramedic certification program.~~

12VAC5-31-1325. Emergency Medical Technician-Enhanced (EMT-E).

[This section will expire on September 10, 2015.]

A. The certification is issued for a period of three years from the end of the month of issuance.

B. An EMS provider who possesses a valid EMT-E certification is simultaneously issued an EMT certification for an additional two years after his EMT-E expiration.

12VAC5-31-1330. EMT Instructor certification program. (Repealed.)

~~The EMS Instructor certification program authorized for issuance of certification in Virginia is EMT Instructor.~~

12VAC5-31-1335. [Emergency Medical Technician-Intermediate (EMT-I) Intermediate].

A. The certification is issued for a period of three years from the end of the month of issuance.

B. An EMS provider who possesses a valid [EMT-I Intermediate] certification is simultaneously issued an EMT certification for an additional two years after his [EMT-I Intermediate] expiration.

12VAC5-31-1337. Advanced Emergency Medical Technician (AEMT).

A. The certification is issued for a period of three years from the end of the month of issuance.

B. An EMS provider who possesses a valid EMT certification is simultaneously issued an EMT certification for an additional two years after his EMT Advanced expiration.

12VAC5-31-1340. Program site accreditation. (Repealed.)

~~A. Program site accreditation. Training programs that lead to eligibility for initial certification at the EMT-Intermediate and EMT-Paramedic level shall hold a valid "Program Site Accreditation" issued by the Office of EMS. ("Program Site Accreditation" is not required when conducting continuing education programs for recertification purposes.)~~

~~B. All certification programs seeking accreditation in Virginia must comply with these regulations and the standards for an Accredited Educational Program for the~~

Emergency Medical Technician Paramedic established by the Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions (CoAEMSP) as initially adopted in 1978, and revised in 1989 and 1999, by the American Academy of Pediatrics, American College of Cardiology, American College of Emergency Physicians, American College of Surgeons, American Society of Anesthesiologists, Commission on Accreditation of Allied Health Education Programs, National Association of Emergency Medical Technicians, and National Registry of Emergency Medical Technicians.

C. The CoAEMSP standards are adopted by reference with the following provisions:

1. In any instance where the CoAEMSP standards conflict with these regulations, these regulations will prevail.
2. The CoAEMSP standards, as adopted by reference, will apply equally to all training programs required to hold accreditation by these regulations with these exclusions:
 - a. The following are optional components of the Virginia Paramedic Accreditation Standards:
 - (1) Section 1: General Requirements, A. Sponsorship, 1. Institutional Accreditation.
 - (2) Section 1: General Requirements, A. Sponsorship, 2. Institutional Authority.
 - (3) Section 1: General Requirements, A. Sponsorship, 4. Eligible Sponsors.
 - (4) Section 1: General Requirements, A. Sponsorship, 6. Institutional Commitment.
 - (5) Section 1: General Requirements, B. Resources, 1. Personnel, a. Administrative Personnel, (1) Program Director/Direction, (c) Qualifications or Equivalents, 1).
 - (6) Section 1: General Requirements, B. Resources, 1. Personnel, c. Support Staff.
 - (7) Section 1: General Requirements, B. Resources, 1. Personnel, d. Professional Development.
 - (8) Section 1: General Requirements, D. Operation Policies, 1. Fair Practices, j.
 - b. The following are optional components of the Virginia Intermediate Accreditation Standards:
 - (1) Section 1: General Requirements, A. Sponsorship, 1. Institutional Accreditation.
 - (2) Section 1: General Requirements, A. Sponsorship, 2. Institutional Authority.
 - (3) Section 1: General Requirements, A. Sponsorship, 4. Eligible Sponsors.
 - (4) Section 1: General Requirements, A. Sponsorship, 6. Institutional Commitment.
 - (5) Section 1: General Requirements, B. Resources, 1. Personnel, a. Administrative Personnel, (1) Program Director/Direction, (c) Qualifications or Equivalents, 1).

(6) Section 1: General Requirements, B. Resources, 1. Personnel, c. Support Staff.

(7) Section 1: General Requirements, B. Resources, 1. Personnel, d. Professional Development.

(8) Section 1: General Requirements, D. Operation Policies, 1. Fair Practices, j.

e. Training programs that hold current "Program Site Accreditation" to conduct EMT Paramedic programs may also conduct EMT Intermediate programs.

3. The program director for an EMT Intermediate program is not required to hold a bachelor's degree as specified in subsection B 1 a (1) (c) 1) of the CoAEMSP standards.

4. The medical director required by subsection B 1 a (2) of the CoAEMSP standards shall also meet the requirements for a physician course director (PCD) as required by these regulations.

5. The guidelines accompanying the CoAEMSP standards and printed in that document in italics typeface provide examples intended to assist in interpreting the CoAEMSP standards. These guidelines are not regulations as defined by the Code of Virginia.

12VAC5-31-1345. [Emergency Medical Technician-Paramedic (EMT-P) Paramedic].

A. The certification is issued for a period of three years from the end of the month of issuance.

B. An EMS provider who possesses a valid [EMT-P Paramedic] certification is simultaneously issued an EMT certification for an additional two years after his [EMT-P Paramedic] expiration.

12VAC5-31-1350. Training site accreditation process. (Repealed.)

A. The accreditation process will begin upon the receipt by the Office of EMS of a written request for accreditation.

B. The Office of EMS will forward the request to a site reviewer who will conduct the accreditation analysis. Independent site reviewers utilized by the Office of EMS shall be persons who are not affiliated with the applicant training program or another similar program located in the same geographical region.

C. The applicable regional EMS council or local EMS resource shall submit to the site reviewer an evaluation indicating its position toward the applicant program's accreditation request.

D. The Office of EMS will determine the suitability of the training site for program site accreditation upon review of the accreditation analysis submitted to the Office of EMS by the site reviewer. The Office of EMS may either accept or deny the application for accreditation.

1. If the accreditation analysis determines that the training program is in full compliance with the requirements for accreditation, the Office of EMS will issue full accreditation for a period of five years.

Regulations

~~2. The Office of EMS will issue conditional accreditation for a period of less than five years if the accreditation analysis identifies deficiencies that are determined to be of concern but do not justify prohibiting the program from starting and completing an initial training program. Before starting any additional certification courses, the program site must receive full accreditation by correcting the identified deficiencies.~~

~~3. The Office of EMS will deny an application for accreditation if the accreditation analysis identifies deficiencies that are determined to be sufficient to prohibit the program from starting an initial training program.~~

12VAC5-31-1355. Emergency Medical Technician instructor.

[This section will expire on September 10, 2014.]

A. The certification is valid for a period of two years from the end of the month of issuance.

B. An EMS provider who possesses a valid instructor certification is simultaneously issued an EMT certification valid for an additional two years after his instructor expiration.

12VAC5-31-1360. Renewal of program site accreditation. (Repealed.)

~~A. A training program site shall apply for renewal not less than 90 days before expiration of its current accreditation period. Reaccreditation will require review by a site reviewer of the program's performance and a recommendation to the Office of EMS for approval. However, programs conducting training courses leading to certification at the EMT-Paramedic level may be renewed only through compliance with the requirements of 12VAC5-31-1390. Renewal of a "Program Site Accreditation" will be valid for an additional five year period.~~

~~B. If the site reviewer does not recommend renewal of a program site's accreditation, the Office of EMS will review all supporting documentation and make a determination of suitability for "Program Site Accreditation" renewal.~~

12VAC5-31-1365. Advanced Life Support coordinator.

The certification is valid for a period of two years from the end of the month of issuance.

12VAC5-31-1370. Appeal of site accreditation application results. (Repealed.)

~~Appeals by a program concerning the denial of initial or renewal accreditation, or the issuance of conditional accreditation by the Office of EMS will be reviewed by a committee of the State EMS Advisory Board and follow the Administrative Process Act.~~

12VAC5-31-1375. EMS education coordinator.

The certification is valid for a period of [~~two~~ three] years from the end of the month of issuance.

12VAC5-31-1380. Program site accreditation administration. (Repealed.)

~~A. State accreditation will be administered through the process established in the "Training Program Administration Manual" for the certification levels of the training programs conducted by the program site.~~

~~B. Any program that has achieved accreditation issued by the Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions (CoAEMSP) or an equivalent organization approved by the Office of EMS will be considered in compliance with this Section. State "Program Site Accreditation" will be issued for a period concurrent with that issued by the CoAEMSP or other approved organization up to a maximum of five years.~~

~~1. As a condition for equivalent accreditation, a representative from the Office of EMS must be included with each visit by the CoAEMSP or any other approved accreditation organization.~~

~~2. The program must notify the Office of EMS immediately upon receiving the dates for any visits and include:~~

~~a. Dates;~~

~~b. Times; and~~

~~c. The schedule of events.~~

~~3. Accreditation issued by CoAEMSP or other organization approved by the Office of EMS must remain current during any certification training program that requires accreditation by the Office of EMS. Revocation, removal or expiration of accreditation issued by CoAEMSP or other another organization approved by the Office of EMS will invalidate the corresponding state accreditation of the training program.~~

~~C. Each program must meet all other requirements as outlined in these regulations and the state approved curriculum and course guide.~~

Article 2

Certification Process and Practice

12VAC5-31-1385. Certification periods.

An EMS certification is valid for the prescribed period as defined in Article 1 of this part for each level of certification unless suspended or revoked by the commissioner.

12VAC5-31-1387. Virginia EMS certification is required to practice.

In order to function as an EMS provider in the Commonwealth of Virginia, providers must hold a valid certification as issued by the commissioner and as defined in 12VAC5-31-1040.

12VAC5-31-1389. Initial course certification.

A. Candidates must successfully complete an approved Virginia certification course to be eligible for the certification examination.

B. Candidates must then successfully complete the certification examination to receive Virginia certification at the level for which the course is approved.

12VAC5-31-1390. Program site accreditation of EMT-Paramedic programs. (Repealed.)

A. A training program that leads to eligibility for certification at the EMT Paramedic level must be an accredited program before the course begins.

B. Initial accreditation can be issued by the Office of EMS pursuant to 12VAC5 31 1340 or by acceptance of accreditation issued by the Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions (CoAEMSP) or another approved equivalent accreditation organization.

C. Following an initial five year state accreditation period, renewal of accreditation at the EMT Paramedic level will be issued only upon verification of accreditation issued by the CoAEMSP or another approved equivalent accreditation organization per 12VAC5 31 1380.

12VAC5-31-1391. Certification through reciprocity.

A person holding valid EMS certification from another state or a recognized EMS certifying body with which Virginia has a formal written agreement of reciprocity or possessing a National Registry certification at the [intermediate EMR, EMT, Advanced EMT, Intermediate] 99 or [paramedic Paramedic] level shall apply to the commissioner for reciprocity upon demonstration of Virginia residency, Virginia EMS agency affiliation, or a recognized need for Virginia EMS certification [and demonstrate as defined by the Office of EMS eligibility for certification at the level sought in Virginia from the state in which the same level training program was held.]

12VAC5-31-1393. Certification through legal recognition.

A person holding valid EMS certification from another state or a recognized EMS certifying body who does not meet the criteria in 12VAC5-31-1391 shall apply to the commissioner for legal recognition upon demonstration of Virginia residency, Virginia EMS agency affiliation, or a recognized need for Virginia EMS certification. Legal recognition may be issued for a period of one year or the duration of his current certification, whichever is shorter. Legal recognition is not available for any Virginia certification level if the Board of Health has determined that no equivalent exists at the level requested.

12VAC5-31-1395. EMT certification challenge.

A practical nurse, registered nurse to include those recognized through the Nurse Licensure Compact (§ 54.1-3030 et seq. of the Code of Virginia), physician assistant, dentist, or chiropractor who holds a current license to practice in Virginia; military corpsman with current credentials; and third or fourth year medical students shall apply to the commissioner for authorization to challenge at the EMT level. Upon completing the requirements for the EMT

recertification and receiving notification of testing eligibility the candidate must complete the written and practical examination. Examination waivers are not allowed.

12VAC5-31-1400. Course approval request. (Repealed.)

A. A course coordinator shall submit to the Office of EMS a complete course approval request form 30 days before the beginning date of a certification or continuing education course that includes the following:

1. The signature of the course coordinator.
2. The signature of the physician course director if requesting a BLS or ALS certification program or "Required (Category 1)" CE hours.

B. The course coordinator shall use the course number assigned by the Office of EMS to identify the certification or CE program.

C. The course coordinator shall only use those CE topic and subtopic numbers assigned for the specific course approved by the Office of EMS when submitting a CE record/seacard.

D. In addition, training programs leading to certification at an initial or higher certification level shall also comply with the requirements for "Program Site Accreditation" listed in 12VAC5 31 1340 through 12VAC5 31 1390, if an accreditation process for the involved certification level has been adopted by the Office of EMS.

12VAC5-31-1401. General recertification requirements.

A. An EMS provider must complete the requirements for recertification and the Office of EMS must receive the required documentation within the issued certification period to maintain a current certification.

B. An EMS provider requesting recertification must complete the continuing education (CE) hour requirements for the level to be recertified.

C. An EMS provider requesting recertification must pass the written state certification examination.

1. An EMS provider affiliated with an EMS agency may be granted an exam waiver from the state written certification examination by the OMD of the EMS agency, provided:

a. The EMS provider meets the recertification requirements including those established by the OMD; and

b. The EMS provider must submit a completed Virginia EMS Certification Application with the exam waiver approval signed by the EMS agency OMD, which must be received by the Office of EMS within 30 days following the expiration of his certification.

(1) If the Virginia EMS Certification Application form is received by the Office of EMS after the EMS provider's certification expiration date, the EMS provider may not practice at the expired certification level until a valid certification is received from the Office of EMS.

Regulations

(2) If the Virginia EMS Certification Application form is received by the Office of EMS more than 30 days after the EMS provider's certification expiration date, his certification will be in reentry and he will be required to test pursuant to 12VAC5-31-1407.

2. An EMS provider under legal recognition pursuant to 12VAC5-31-1393 must pass a written and practical EMS certification examination and is not eligible for examination waiver.

12VAC5-31-1403. EMS provider recertification required.

A. Recertification of EMS credentials requires each individual to complete continuing education requirements as approved by the Board of Health and fulfill the recertification process before the expiration date of an applicable certification or reentry period.

B. The Board of Health will determine the continuing education hour [and topic category] requirements for each certification level.

C. Evidence of completion of the continuing education requirements must be received by the Office of EMS prior to the certification expiration.

12VAC5-31-1405. Documentation of continuing education (CE).

A. Continuing education credit is only awarded to courses announced to the Office of EMS in a format as approved by the Office of EMS prior to the course being conducted and other programs approved by the Office of EMS for award of CE.

B. Award of credit for attendance in a CE program shall be submitted in a format approved by the Office of EMS.

12VAC5-31-1407. Recertification through reentry.

A. Individuals whose certification has expired may regain certification through completion of the reentry program within two years of the specific certification's expiration date. To reenter the person must fulfill the requirements as applicable in this chapter including all required testing within the two-year reentry period.

B. Individuals failing to complete the reentry process by the end of the two-year period following certification expiration will be required to complete an initial training program for the level lost.

Article 3

Educational Programs and Management

12VAC5-31-1409. Course curriculum.

A. Course coordinators (EMT instructor, ALS coordinator, or EMS education coordinator) shall utilize curricula or educational standards authorized and approved by the Office of EMS when conducting EMS education programs.

B. CE topics must be submitted for review and approval in a format as approved by the Office of EMS.

12VAC5-31-1410. Physician course director involvement. (Repealed.)

A course coordinator must inform the physician course director of the program schedule, progress of individual student performance, student or instructor complaints and the status of other program activities.

12VAC5-31-1411. BLS certification programs.

BLS certification programs authorized for issuance of certification in Virginia are:

1. EMS First Responder.
2. EMS First Responder Bridge to EMT.
3. Emergency Medical Responder (EMR).
4. Emergency Medical Responder Bridge to EMT.
5. Emergency Medical Technician (EMT).

12VAC5-31-1413. Advanced life support certification programs.

ALS certification programs authorized for issuance of certification in Virginia are:

1. EMT-Enhanced.
2. EMT -Enhanced Bridge to Intermediate.
3. Advanced EMT.
4. Advanced EMT Bridge to [Paramedic Intermediate].
5. [EMT Intermediate Intermediate].
6. [EMT Intermediate Intermediate] Bridge to Paramedic.
7. [EMT Paramedic Paramedic].
- [8. RN Bridge to Paramedic.]

12VAC5-31-1415. Nationally recognized continuing education programs.

A. In order for a provider to receive continuing education in Virginia for [~~a national~~ an auxiliary] program, the national parent organization must be recognized by the Board of Health.

B. The instructor approved by the national parent organization referenced in subsection A of this section may award Category 1 continuing education credit for providers successfully completing an approved course. The instructor is not required to be an EMT instructor, ALS coordinator, or an EMS education coordinator in order to submit for course approval.

12VAC5-31-1417. Approved courses in cardio-pulmonary resuscitation.

A. Recognized programs for certification in cardiopulmonary resuscitation (CPR) for the purposes of testing for all certification levels are based upon programs approved by the Board of Health.

B. Completion of an approved course that tests the following skills is required:

1. One and two rescuer CPR - adult, child, infant resuscitation.

2. Complete airway obstruction - unconscious victim - adult, child, infant.
3. Complete airway obstruction - conscious victim - adult, child, infant.
4. Automated external defibrillation.

12VAC5-31-1419. Continuing education programs.

The programs must utilize the approved format for the corresponding level of certification as designed by the Office of EMS:

1. Category 1 (required) are topic areas that are required as part of the recertification criteria.
2. Category 2 (approved) are topic areas that support EMS activities.
3. Category 3 are topic areas that are delivered through a multimedia format as approved by the Board of Health.

12VAC5-31-1420. Course coordinator and instructor accountability. (Repealed.)

~~A. A course coordinator or instructor who violates these regulations is subject to enforcement action by the Office of EMS. The Office of EMS may suspend the instruction of an ongoing course or withhold issuance of certification until an investigation is concluded.~~

~~B. A course coordinator or instructor found to be in violation of these regulations following an investigation may be subject to the following:~~

- ~~1. Termination of the certification program.~~
- ~~2. Invalidation of certificates or CE hours issued to students.~~
- ~~3. Suspension or revocation of any or all certifications of the course coordinator.~~
- ~~4. Suspension or revocation of any or all certifications of an instructor.~~

12VAC5-31-1421. Teaching materials and approved texts.

A. EMT instructor, ALS coordinator, or an EMS education coordinator shall use teaching materials and textbooks that reflect current EMS practices.

B. All textbooks and primary teaching materials utilized in a program shall be reviewed and receive written approval prior to the start of the program by the physician course director (PCD) or OMD and shall be maintained with other course records in accordance with the Virginia Public Records Act (Chapter 7 (§ 42.1-76 et seq.) of Title 42.1 of the Code of Virginia).

12VAC5-31-1423. Course announcement requirements.

A. BLS certification courses and continuing education programs that award Category 1 (required) continuing education credits shall be announced by an EMT instructor or EMS education coordinator. An EMT instructor or EMS education coordinator shall be present in the classroom at all times except:

1. In courses offered by the Office of EMS accredited programs, or
2. In BLS continuing education programs.

B. ALS certification courses and continuing education programs that award Category 1 (required) continuing education credits shall be announced by an ALS coordinator or EMS education coordinator.

12VAC5-31-1425. EMT instructor, ALS coordinator, or EMS education coordinator responsibilities as employee or contractor.

A. An EMT instructor, ALS coordinator [,] or EMS education coordinator conducting [a] training [program programs] as an employee or contractor for any other person as defined in § 1-230 of the Code of Virginia, whether or not for profit, shall retain responsibility for compliance with the Office of EMS regulations.

B. Any other person as defined in § 1-230 of the Code of Virginia who operates an organization for the purpose of providing an EMS training program that employs or contracts with an EMT instructor, ALS coordinator, or EMS education coordinator to conduct a training program may not vary from or direct the EMT instructor, ALS coordinator, or EMS education coordinator to vary from compliance with Office of EMS regulations.

12VAC5-31-1427. Course approval request submission.

A. An EMT instructor, ALS coordinator, or EMS education coordinator shall submit a course approval request in a format approved by the Board of Health prior to the beginning date of a certification or continuing education course.

1. Any approved course requesting funding through the EMS training fund requires that the course approval request and funding contract must be post marked or received [, and date and time stamped,] by the Office of EMS no less than 45 days prior to the begin date for the course.

2. Courses shall not start prior to receiving course number and topic or topics from the Office of EMS.

B. The EMT instructor, ALS coordinator, or EMS education coordinator shall use only those topic numbers assigned for the course as approved by the Office of EMS.

12VAC5-31-1429. Course approval request changes.

The course coordinator shall immediately notify the Office of EMS in writing of any changes in the information submitted on the Course Approval Request form.

12VAC5-31-1430. Certification examination. (Repealed.)

~~A Test Site Coordinator shall comply with the requirements for certification examinations. The Office of EMS will publish the "Virginia EMS Certification Examination Manual," a document that describes and provides guidance to a test site coordinator on how to comply with these regulations.~~

Regulations

12VAC5-31-1431. Student course enrollment.

[For courses leading to certification at a new or higher level, the] EMT instructor, ALS coordinator [,] or EMS education coordinator [for courses leading to certification at a new or higher level] shall have each student complete a "Virginia EMS Training Program Enrollment" form at the first meeting of the course.

[1.] These forms must be reviewed by the EMT instructor, ALS coordinator, or EMS education coordinator and submitted to the Office of EMS no later than five business days following the first meeting of the course.

[2.] Any student who starts the program at a later date shall complete an enrollment form the first date of attendance providing 15% or more of the entire course has not been completed.

12VAC5-31-1433. Instructor participation records.

The EMT instructor, ALS coordinator, or EMS education coordinator shall maintain [records of attendance the following information: instructor/provider level, subject taught,] and participation of each certified EMT instructor, ALS course coordinator, EMS education coordinator [,] or other individual who instructs in the program.

12VAC5-31-1435. Student records for certification courses.

A. The EMT instructor, ALS coordinator, or EMS education coordinator shall maintain records of class dates, topics instructed, attendance and performance for all students attending a certification course.

B. Student records shall be maintained in accordance with the Virginia Public Records Act (Chapter 7 (§ 42.1-76 et seq.) of Title 42.1 of the Code of Virginia) from the end date of the program and shall include but not be limited to:

1. Signed student acknowledgment forms collected upon completion of review of the appropriate BLS or ALS enrollment requirements.

2. Student signed class [roster rosters].

3. Scores on all course quizzes, exams, and other didactic knowledge or practical skill evaluations.

4. Skill proficiency records [on the applicable form in a format as approved by the Office of EMS]:

a. For BLS programs, BLS individual age and clinical and skill performance verification information in a format as approved by the Office of EMS.

b. For ALS coordinator or EMS education coordinator programs, on forms or documents as approved by the ALS coordinator, EMS education coordinator, or an accredited program.

5. All hospital or field internship activities including dates, locations, competencies performed, student evaluations, preceptor name and certification level as applicable.

6. All corrective or disciplinary actions taken during the training program to include dates, findings supporting the need for corrective or disciplinary action, and all applicable details of steps taken to determine the degree and nature of the actions taken.

7. Copy of the course student disposition report (CSDR).

8. All other records requested to be maintained by the PCD or OMD for the program.

9. Any other records or reports as required by the Office of EMS.

12VAC5-31-1437. Continuing education record submission.

The course coordinator shall submit the CE records in a format approved by the Office of EMS within 15 days of the student's attendance.

12VAC5-31-1439. Verification of student course completion.

Verification of student eligibility on the [CSDR Course Student Disposition Record] by the EMT instructor, ALS coordinator, or EMS education coordinator for certification testing requires that each student successfully complete a certification program [and meet that meets] the competency and performance requirements contained within the applicable course [curriculum requirements] and all other guidelines and procedures for the course and state certification testing eligibility.

12VAC5-31-1440. Certification course enrollment. (Repealed.)

A. For all courses leading to certification at a new or higher level, the course coordinator shall have each student complete a "Virginia EMS Training Program Enrollment" form. These forms shall be reviewed by the course coordinator and submitted to the Office of EMS no later than 15 days following instruction of the third lesson of the training program and no later than 15 days prior to the course's end date. (Earlier submission is allowed and encouraged.)

B. Only students listed as enrolled in the designated training program will be allowed to test for certification using the assigned course number for the specified training program.

All students attending a certification course for recertification must submit the necessary CE record/scan form for award of CE credits and issuance of a "Recertification Eligibility Notice" from the Office of EMS.

12VAC5-31-1441. Communications with PCD or OMD.

A. The EMT instructor, ALS coordinator, or EMS education coordinator shall inform the PCD or OMD of the progress of the training program to include:

1. Any program schedule changes.

2. Individual student performances.

3. Any student or instructor complaints.

4. The general progress of program activities.

B. The EMT instructor, ALS coordinator, or EMS education coordinator will assist the PCD or OMD with fulfillment of their course duties as required by Office of EMS regulations.

12VAC5-31-1443. Alternative course presentation format.

EMS certification courses utilizing an approved alternative course presentation format using two-way video interactive technology shall comply with the following:

1. Use electronic media as real time two-way audio and video transmissions.
2. The EMT instructor, ALS coordinator, or EMS education coordinator must indicate in writing the desire to use such media which shall accompany the Course Approval Request form.
3. Any other requirements established by [, but not limited to,] the Office of EMS and, if applicable, the Virginia Community College System (VCCS) and the Virginia Department of Education.
4. [A For sites using one-way video and two-way audio, a] proctor who is certified at or above the level of the program shall be present at each remote site during the entire broadcast for all didactic portions of the program.
5. Any lab activities at the remote site shall have direct on-site supervision by a course [~~coordinator certified~~ faculty member] at or above the level of instruction. If the [~~instructor~~ faculty member] acts as the remote site proctor, he assumes the responsibility of the class roster.
6. In cases where the remote site proctor is absent or when the remote site electronics are not fully operational (transmit and receive audio or video) the students do not receive credit for attending and the session shall be rescheduled.
7. All course tests for the program whether at the origin or remote site must comply with subdivision 4 of this section.
8. The course coordinator must maintain records of student participation in the approved alternative presentation format and submit continuing education records for each involved student for programs used for continuing education purposes.
9. Noncompliance with these regulations shall result in removal of Office of EMS approval and students shall lose eligibility for certification testing at the level of program certification.
10. The Guidelines for Videobroadcasting of EMS Educational Programs document must be signed by the EMT instructor, ALS coordinator, or EMS education coordinator and PCD or OMD and accompany any request for electronic transmission of a program with the Course Approval Request form.
11. Letter of agreement from the remote site or sites confirming and agreeing to the guidelines.

12VAC5-31-1445. Course scheduling.

Courses schedules shall reflect the minimum hours for the course of instruction of all required lessons of the [~~program~~ program's] curriculum prior to the course end date as approved by the Office of EMS.

12VAC5-31-1447. Maximum BLS or ALS course enrollment.

A. Initial and bridge certification course size shall be limited to a maximum of 30 enrolled students.

1. Additional students seeking continuing education credit may be admitted as reasonably allowed by facility size and instructional staff availability.
2. The group size for practical or lab skill sessions shall not exceed six students per instructor aide (6:1 ratio).

B. Office of EMS accredited institutions or organizations may exceed the maximum of 30 enrolled students, with [demonstrated] resources to meet class size. The group size for practical or lab skill sessions shall not exceed six students per instructor aide (6:1 ratio).

12VAC5-31-1449. Lesson instructors.

A. In addition to the lead instructor for each lesson, arrangements must be made to provide for instructor aides to assist in all practical skill sessions. Instructor aides shall be providers certified at or above the level of instruction.

B. Course coordinators who are certified EMTs may be used for instruction of basic skill stations in advanced life support programs. Basic skills are those procedures not requiring invasive activities or use of ALS equipment.

12VAC5-31-1450. BLS student enrollment requirements. (Repealed.)

~~The enrolled student, certification candidate or EMS provider must comply with the following:~~

- ~~1. Be proficient in reading, writing and speaking the English language in order to clearly communicate with a patient, family or bystander to determine a chief complaint, nature of illness, mechanism of injury or to assess signs and symptoms.~~
- ~~2. Be a minimum of 16 years of age at the beginning date of the certification program. If less than 18 years of age, he shall provide the course coordinator with a completed parental permission form with the signature of a parent or guardian verifying approval for enrollment in the course.~~
- ~~3. Have no physical or mental impairment that would render him unable to perform all practical skills required for that level of certification including the ability to function and communicate independently and perform appropriate patient care, physical assessments and treatments without the need for an assistant.~~
- ~~4. Hold current certification in an approved course in cardio pulmonary resuscitation (CPR) at the beginning date of the certification program. This certification shall also be current at the time of state testing.~~

Regulations

5. ~~May not have been convicted or found guilty of any crime, offense or regulatory violation, or participated in any other prohibited conduct identified in these regulations.~~

6. ~~If in a bridge certification program, he shall hold current Virginia certification at the EMS first responder level.~~

7. ~~Meet other requirements for course enrollment as set by the regional EMS council or local EMS resource, the PCD or the course coordinator, approved by the Office of EMS.~~

12VAC5-31-1451. Course monitoring.

All programs and courses approved for issuance of certification or award of continuing education shall allow unannounced monitoring by the Office of EMS. Failure to comply with such course monitoring may result in the following disciplinary actions to include, but not be limited to:

1. Revocation of the training program's course approval.
2. Suspension or revocation of the training program's authority to award continuing education credits.
3. Revocation of the enrolled student's eligibility for certification testing.
4. Suspension or revocation of the EMS instructor [~~or~~ course, ALS-coordinator, or EMS educational coordinator].

12VAC5-31-1453. EMT instructor, ALS coordinator, [and] EMS educational coordinator responsibilities for initial student testing.

A. An EMT instructor or EMS education coordinator for BLS programs shall ensure the following for documentation of eligibility for certification testing:

1. Submit a completed Course Student Disposition Report (CSDR) in a manner as prescribed by the Office of EMS.
2. Maintain with the course materials the completed individual parental permission form for students between 16 and 18 years of age on the beginning date of the course.
3. Maintain with the course materials the original copy of the completed and signed Basic Life Support Individual Age, Clinical and Skill Performance Verification Record [~~form and provide a copy to the student~~].

B. An ALS coordinator or EMS education coordinator coordinating ALS programs shall [~~provide submit~~] the [~~following documentation of eligibility for certification testing:~~ 1. Completion of the Course Student Disposition (CSDR) CSDR for certification testing eligibility].

[2. ~~A copy of the student's EMT Enhanced competency verification summary to the Office of EMS test examiner.~~]

Article 4

Certification Testing

12VAC5-31-1454. Admission to certification test.

A. The person desiring to take the certification examination must present the following:

1. The Virginia certification eligibility letter.
2. Current government issued photo identification.
3. If a retest, the latest testing results.

B. The person desiring to take the certification examination must be registered for the test site.

12VAC5-31-1455. [~~Initial certification~~ Certification] testing requirements.

A. An Office of EMS written and practical examination process is required by the following:

1. Any candidate who completes an initial program at the following levels:
 - a. [~~First Responder~~ First Responder/EMR].
 - b. Emergency Medical Technician.
 - c. Emergency Medical Technician-Enhanced.
 - d. Advanced EMT.
 - e. [~~Emergency Medical Technician Intermediate~~ 99 Intermediate] provided National Registry no longer tests at this level.
 - [~~f. Emergency Medical Technician Paramedic provided National Registry no longer tests at this level.~~]

2. Any candidate who is challenging the certification level.
3. Any certified EMS provider who received his current certification through legal recognition.
4. Any candidate who is in reentry for First Responder or Emergency Medical Technician.

B. An Office of EMS written examination only is required for the following:

1. Any provider who recertifies prior to his certification expiration except those who received [~~their~~ his] current certification through legal recognition.
2. Any candidate who is in reentry for EMT-Enhanced, Advanced EMT, [~~EMT Intermediate~~ Intermediate] and [~~EMT Paramedic~~ Paramedic].

12VAC5-31-1457. General description of certification examination.

A. Office of EMS certification examinations are required by all providers unless otherwise described in these regulations.

B. Primary certification testing is the first attempt at the certification examination process.

1. This process includes both the written and practical examination for providers seeking a new or higher level of certification.
2. Primary testing must begin [~~;~~ a. ~~Within~~ within] 180 days of the course end date [~~;~~ or.]
 - [~~b. Within the enrollment expiration date for students attending an Office of EMS accredited program.~~]

C. Primary retest requires the candidate to retest that portion of the primary test failed within 90 days of the primary test attempt.

D. Secondary certification testing (written and practical) occurs when a candidate fails the primary attempt and either fails the primary retest or does not retest within 90 days of the primary examination attempt. Secondary certification testing requires the candidate to submit as described in these regulations CE that satisfies the recertification requirements for the level of EMS certification sought.

E. Secondary retest requires the candidate to retest that portion of the secondary test failed within 90 days of the secondary test attempt.

F. Successful completion of the certification examination process must be completed [~~1. Within~~ within] 365 days of the primary test attempt [~~or.~~]

[~~2. Prior to the enrollment expiration date for students attending an Office of EMS accredited program.~~]

G. The certification examination process requires that certification testing be conducted and proctored [in a manner approved] by the Office of EMS.

12VAC5-31-1459. Certification eligibility.

Certification eligibility will be demonstrated by the possession of a valid eligibility letter from the Office of EMS by the candidate.

12VAC5-31-1460. ALS student enrollment requirements. (Repealed.)

An enrolled student in an ALS certification program (EMT-Enhanced, EMT-Intermediate or EMT-Paramedic) must comply with the following:

1. Be proficient in reading, writing and speaking the English language in order to clearly communicate with a patient, family or bystander to determine a chief complaint, nature of illness, mechanism of injury or to assess signs and symptoms.
2. Be a minimum of 18 years of age at the beginning date of the certification program.
3. Hold current certification as an EMT or higher EMS certification level.
4. Hold, at a minimum, a high school or general equivalency diploma.
5. Have no physical or mental impairment that would render him unable to perform all practical skills required for that level of training. Physical performance skills must include the ability of the student to function and communicate independently, to perform appropriate patient care, physical assessments and treatments without the need for an assistant.
6. Not have been convicted or found guilty of any crime, offense or regulatory violation, or participated in any other prohibited conduct identified in these regulations.
7. Meet requirements for course enrollment as set by the regional EMS council or local EMS resource, the PCD or the course coordinator, approved by the Office of EMS.

8. If in an ALS bridge certification program between certification levels, have completed the eligibility requirements for certification at the prerequisite lower ALS level at the beginning date of the ALS bridge certification program. He shall also become certified at the lower ALS certification level before certification testing for the higher level of the ALS bridge certification program.

12VAC5-31-1461. Prohibition of oral examinations.

A certification candidate may not use another person or any electronic or mechanical means to translate [written] certification examination material into an audible [~~or,~~] tactile [, or visual] format.

12VAC5-31-1463. Candidates requirements for state recertification.

A. This section shall apply to individuals requesting state recertification who hold current certification at or below the level requested to be recertified (excluding those who gained their current certification through legal recognition).

B. Students requesting recertification must demonstrate eligibility as evidenced by completion of the continuing education requirements for the corresponding recertification program for the level to be recertified. Evidence of completion for the continuing education requirements shall be received by the Office of EMS in an approved method prior to certification expiration for the provider to be classified in current provider status.

12VAC5-31-1465. Recertification examination requirement.

A. Individuals who are eligible to recertify and hold current certifications are required to successfully complete the state written examination process based upon the following:

1. All individuals who are not affiliated with a licensed EMS agency must take the state written examination to recertify.
2. Individuals affiliated with a licensed EMS agency may be granted an exam waiver from the state written recertification examination by the operational medical director (OMD) of the EMS agency, provided:
 - a. A completed Virginia EMS Certification Application signed by the OMD and the individual is submitted to the Office of EMS documenting the exam waiver or a format approved by the Office of EMS.
 - b. A Virginia EMS Certification Application form submitted as an exam waiver must be received by the Office of EMS no later than 30 days following the expiration of the individual's certification at the level being waived.

(1) Virginia EMS Certification Application forms received by the Office of EMS during the 30 days after the individual's certification expiration date will be considered valid for recertification purposes. However,

Regulations

during this period following expiration, the individual may not practice at the expired certification level.

(2) Virginia EMS Certification Application forms received by the Office of EMS more than 30 days after the individual's certification expiration date will be considered as invalid and the individual will be deemed in reentry status and required to test to regain current certification.

B. Candidates in current provider status required or choosing to take the state recertification examination must demonstrate eligibility as evidenced by presentation of a valid recertification eligibility notice letter from the Office of EMS.

12VAC5-31-1467. Basic and advanced life support written examinations.

A. All state written examinations shall be conducted by the Office of EMS.

B. The Office of EMS standard for successful completion is defined as a minimum score of:

1. 70% on all basic life support certification examinations.
2. 80% on all EMT instructor [and EMS education coordinator] certification examinations.
3. 85% on all EMT instructor [and EMS education coordinator] pretest examinations.
4. 80% on all advanced life support certification examinations.

12VAC5-31-1469. Basic and advanced life support practical certification examinations.

A. Practical examinations shall be conducted by the Office of EMS or as approved for accredited training programs.

B. Candidates taking a practical examination conducted by the Office of EMS shall demonstrate proficiency on all practical stations required for the program level being tested. Grades of unsatisfactory will constitute failure of that station, requiring a retest.

C. Candidates failing any practical station examination conducted by the Office of EMS will have an opportunity to retest the station or stations failed.

D. If a primary retest is failed, the candidate examination conducted by the Office of EMS must complete the secondary retest requirements.

12VAC5-31-1470. Course coordinator responsibility for certification candidate eligibility. (Repealed.)

~~A course coordinator shall provide the successful certification candidate the following documentation of eligibility for testing:~~

1. ~~A "Virginia EMS Certification Application" with required signature attesting to the eligibility for certification testing.~~
 - a. ~~If a BLS certification program, the course coordinator shall by his signature attest to the eligibility of the certification candidate for certification testing.~~

~~b. If an ALS certification program, the physician course director shall by his signature attest to the eligibility of the certification candidate for certification testing.~~

~~2. If a certification candidate is less than 18 years of age on the beginning date of the program, the parental permission form that was completed and signed at the beginning of the program.~~

~~3. A completed individual skill performance, clinical training or field internship record, or a combination of these, as applicable for the EMS certification program.~~

12VAC5-31-1471. Examination retest.

A. Candidates failing to achieve a minimum passing score on any state administered written or practical examinations must retest within 90 days from the original exam date.

B. BLS and EMT Enhanced candidates failing one or more stations of the practical but passing the written examination are not required to repeat a successful written examination of a testing series. Likewise, a candidate failing the written examination would not be required to repeat a successful practical examination of a testing series.

C. If any retest is failed or a retest is not taken within the allowed 90-day retest period, the candidate will be considered to have failed the initial testing series and must complete secondary eligibility before secondary certification testing may be attempted.

D. Secondary certification testing eligibility requires:

1. Satisfaction of all requirements as set forth in the minimum continuing education requirements for the corresponding recertification CE program for the level being tested.

a. This training may not include any course or program completed before the initial series of testing.

b. This training may include those CE hours completed after the initial certification examination has been attempted.

c. This training must be submitted on CE cards or a format as approved by the Office of EMS.

2. Receipt of written notification from the Office of EMS of eligibility for secondary certification testing.

E. Upon notification of eligibility to test from the Office of EMS, a candidate who has previously failed a written or practical retest will be allowed one additional series of testing.

1. Candidates attempting a second series of testing are required to successfully complete both the written and practical examinations regardless of the results of the previous testing attempts.

2. This requirement for successful completion of both the written and practical examinations will apply equally to initial, recertification, and reentry candidates who have failed a previous series of testing.

3. All appropriate sections of these regulations will apply to the second series of testing.

F. Failure of any retest during the second series of testing will require the candidate to complete an entire initial basic training program or applicable bridge course before any additional testing may be attempted at this certification level.

G. The requirements of this section including initial and secondary certification testing series must be completed within 365 days from the date of the initial certification test attempt (i.e., first test date) or prior to the enrollment expiration date for students attending an OEMS accredited program. Failure to complete this process within this prescribed period will require the candidate to repeat an entire initial basic training program or applicable bridge course before any additional testing may be attempted at this certification level.

H. Future testing of candidates required to complete an entire initial basic training program under subsections F or G of this section will be processed in the same manner as any candidate completing a similar course for the first time.

12VAC5-31-1473. Candidate evidence of eligibility for retesting.

Candidates requesting to retest a failed written or practical exam or exams must demonstrate eligibility as evidenced by presentation of the letter of retest eligibility from the Office of EMS and the latest test results.

12VAC5-31-1475. Candidate evidence of eligibility for secondary testing.

Candidates requesting testing a second series of exams after failure of an initial testing series must demonstrate eligibility as evidenced by valid secondary eligibility notice from the Office of EMS.

12VAC5-31-1477. Examination security and review.

A. All Virginia examinations are the property of the Office of EMS. Individuals taking an examination may not copy or make recordings or reproduce in any other manner any material from the examination. Failure to return the examination will subject the individual to disqualification for certification.

B. Giving or obtaining information or aid prior to, during, or following any exam as evidenced by direct observation of the state examination administrator or administrators or subsequent analysis of examination results or engaging in other prohibited acts, may be sufficient cause to terminate candidate participation, to invalidate the results of a candidate's examination, to take enforcement action against other involved persons, or to take other appropriate action even if there is no evidence of improper conduct by the candidate. In these cases, the Office of EMS reserves the right to delay processing of examination results until a thorough and complete investigation may be conducted.

1. Unauthorized giving or obtaining information will include but not be limited to:

- a. Giving unauthorized access to secure test questions.
- b. Copying or reproducing all or any portion of any secure test booklet.
- c. Divulging the contents of any portion of a secure test.
- d. Altering candidate's responses in any way.
- e. Making available any answer keys.
- f. Providing a false certification on any test security form required by the Office of EMS.
- g. Retaining a copy of secure test questions.
- h. Falsely taking any examination, or part thereof, on behalf of another individual.
- i. Participating in, directing, aiding, or assisting in any of the acts prohibited by this section.

2. For the purposes of this section the term "secure test" means any item, question, or test that has not been made publicly available by the Office of EMS.

3. Nothing in this section may be construed to prohibit or restrict the reasonable and necessary actions of the Office of EMS in test development or selection, test form construction, standard setting, test scoring and reporting, or any other related activities that in the judgment of the Office of EMS are necessary and appropriate.

C. Under no circumstances will written examinations and practical scenarios be provided to EMT instructor, ALS coordinator, EMS education coordinator, PCD or OMD, or candidates for their review at any time.

12VAC5-31-1480. Eligibility for certification examination. (Repealed.)

~~A. A certification candidate shall take the initial EMS certification examination within 180 days of the end date of the EMS certification program by presenting the following at a state certification examination:~~

- ~~1. A completed "Virginia EMS Certification Application" form signed by the course coordinator for BLS programs or the physician course director for ALS programs.~~
- ~~2. A parental permission form if the certification candidate was less than 18 years of age on the beginning date of a BLS program.~~
- ~~3. A completed individual skill performance, clinical training or field internship record, or a combination of these, as applicable for the EMS certification program.~~
- ~~4. For BLS certification courses, a current CPR card or a valid copy of the course roster from a CPR course approved by the Office of EMS unless an individual skill performance record verifies this information.~~
- ~~5. Positive identification in the form of a government issued picture identification card.~~

~~B. A certification candidate in recertification, reentry, equivalency challenge or legal recognition status shall present the following at a state certification examination:~~

Regulations

- ~~1. A "Recertification Eligibility Notice" or test authorization letter from the Office of EMS.~~
- ~~2. Positive identification in the form of a government-issued picture identification card.~~

12VAC5-31-1490. Recertification Eligibility Notice. (Repealed.)

~~A. An EMS provider who has satisfied the CE hours specified for his certification level may be issued a "Recertification Eligibility Notice."~~

~~B. A "Recertification Eligibility Notice" remains valid until the expiration of the current certification period or the two-year "reentry" period for the level indicated unless the requirements for recertification are changed by the Office of EMS.~~

12VAC5-31-1500. Eligibility for EMT Instructor certification program. (Repealed.)

~~A. An EMS provider must comply with the following in order to be eligible to take the EMT Instructor written examination:~~

- ~~1. Be a minimum of 21 years of age.~~
- ~~2. Hold current certification as an EMT or higher EMS certification level, and have been certified as an EMT for a minimum of two years.~~
- ~~3. Be a high school graduate or equivalent.~~
- ~~4. Have completed any other prerequisite training required by the Office of EMS.~~
- ~~5. Obtain a minimum score of 85% on a written pretest examination.~~
 - ~~a. Instructor pretest results are valid for a period of two years from the date of the written examination.~~
 - ~~b. An EMS provider failing a written pretest examination is not eligible to repeat the examination for a period of 90 days from the date of the examination.~~

~~B. An EMT instructor candidate shall demonstrate competency during a formal practical pretest examination. An EMT instructor candidate shall provide the Office of EMS the following to be eligible for the practical examination:~~

- ~~1. An EMT instructor candidate affiliated with an EMS agency shall be recommended by the EMS physician serving as the agency's OMD.~~
- ~~2. An EMT instructor candidate who is not affiliated with an EMS agency shall provide both a recommendation from an EMS physician and a statement from his employer or perspective employer attesting to the need for instructor certification to meet the EMS training needs of the organization.~~

~~C. An EMT instructor candidate shall receive an invitation from the Office of EMS to attend an instructor institute.~~

- ~~1. An EMT instructor candidate shall successfully complete an EMT instructor institute conducted by the Office of EMS. Attendance of some portions of the EMT-~~

~~instructor institute may be waived for qualified candidates who present documentation of completion of equivalent programs in adult education approved by the Office of EMS.~~

~~2. An EMT instructor candidate shall demonstrate application of the knowledge and skills required of an Instructor during a teaching presentation made at the Instructor Institute.~~

- ~~a. An EMT instructor candidate who performs to an acceptable level may be certified.~~
- ~~b. An EMT instructor candidate who performs at an unacceptable level will be deemed to have failed the instructor institute. The candidate will be required to repeat the entire EMT Instructor certification process to apply for EMT instructor certification.~~
- ~~e. An EMT instructor candidate who performs at a marginal level may be granted "Conditional Instructor Status."~~

Article 5 BLS Programs

12VAC5-31-1501. BLS certification course attendance.

A. Students must [be present for complete] a minimum of 85% of the [entire didactic and lab aspects of the] course.

B. Students must complete all healthcare facility competency and field internship requirements for the program.

C. Students must successfully demonstrate competency to perform all required skills as specified by the Office of EMS for the level of the training program attended. Use of training manikin practice may not substitute for performance of skills involving actual patients in a clinical setting except as allowed by the Office of EMS.

12VAC5-31-1503. BLS course student requirements.

The enrolled student, certification candidate, or EMS provider must comply with the following:

1. Be proficient in reading, writing and speaking the English language in order to clearly communicate with a patient, family, or bystander to determine a chief complaint, nature of illness or, mechanism of injury; assess signs and symptoms; and interpret protocols.
2. Be a minimum of 16 years of age at the beginning date of the certification program. If less than 18 years of age, the student must provide the EMT instructor or the EMS educational coordinator with a completed parental permission form as approved by the Office of EMS with the signature of a parent or guardian supporting enrollment in the course.
3. Have no physical or mental impairment that would render the student or provider unable to perform all practical skills required for that level of certification including the ability to function and communicate

independently and perform patient care, physical assessments, and treatments.

4. Hold current certification in an approved course in cardio-pulmonary resuscitation (CPR) at the beginning date of the certification program. This certification must also be current at the time of state testing.

5. If in a bridge certification program, the student must hold current Virginia certification at the EMS First Responder level through completion of the certification examination process.

12VAC5-31-1505. EMS First Responder certification program.

The EMS First Responder curriculum will be the current version of the Virginia Standard Curriculum or Virginia education standards for the EMS First Responder as approved by the Office of EMS and will consist of a minimum number of hours of didactic training.

12VAC5-31-1507. First Responder bridge to EMT.

The Virginia EMS First Responder Bridge curriculum will be based upon the National Standard Curriculum for the EMT and the bridge program curriculum approved by the Office of EMS.

12VAC5-31-1509. EMS First Responder bridge length.

The Virginia EMS First Responder Bridge will consist of a minimum number of hours of didactic training and competency.

12VAC5-31-1510. EMS certification written examination. (Repealed.)

A certification candidate shall pass the written certification examination with a minimum score of:

1. 70% on a BLS certification examination.
2. 80% on an ALS certification examination.
3. 85% on an EMT Instructor pretest examination.
4. 80% on an EMT Instructor recertification examination.

12VAC5-31-1511. First Responder bridge to EMT certification examinations.

Candidates completing the Virginia EMS First Responder Bridge program must complete the current EMT written and practical examinations administered by the Office of EMS.

12VAC5-31-1513. Emergency Medical Technician (EMT) certification.

The EMT curriculum will be based upon the current version of the National Standard Curriculum for the EMT or Virginia education standards and any additions, deletions, or other modifications as approved by the Office of EMS and will consist of a minimum number of hours of didactic training and competency.

12VAC5-31-1515. Emergency Medical Technician (EMT) certification examination.

Candidates completing the EMT training program must successfully complete the Office of EMS approved EMT written and practical examinations.

12VAC5-31-1520. EMS certification practical examination. (Repealed.)

A. A certification candidate shall pass all practical stations required for the certification level being tested.

B. A grade of UNSATISFACTORY on a critical criteria within a practical station will result in failure of that station.

C. A grade of UNSATISFACTORY on a practical station that uses numeric scoring will include failure to obtain the minimum required points.

Article 6
ALS Programs

12VAC5-31-1521. ALS course student requirements.

An enrolled student in an ALS certification program shall comply with the following:

1. Be proficient in reading, writing and speaking the English language in order to clearly communicate with a patient, family or bystander to determine a chief complaint, nature of illness, mechanism of injury, to assess signs and symptoms, and interpret protocols.
2. Be a minimum of 18 years of age at the beginning date of the certification program.
3. Certification as an EMT or higher EMS certification level.
4. Posses a high school or general equivalency diploma.
5. Have no physical or mental impairment that would render the student or provider unable to perform all practical skill required for that level of certification including the ability to function and communicate independently and perform appropriate patient care, physical assessments, and treatments.
6. If in a bridge certification program, the student shall be eligible for certification at the prerequisite lower ALS level at the beginning date of the bridge program and shall have obtained certification at the bridge program's prerequisite certification level before certification testing for the bridge level.

12VAC5-31-1523. EMT-Enhanced certification.

A. The EMT-Enhanced curriculum will be the current Virginia Standard Curriculum for the EMT-Enhanced as approved by the Office of EMS.

B. Certification for the EMT-Enhanced course will be awarded upon successful completion of written and practical examinations administered by the Office of EMS.

C. EMT-Enhanced certification practical testing will follow practical testing guidelines as approved by the Office of EMS.

Regulations

12VAC5-31-1524. Advanced EMT certification.

A. The Advanced EMT curriculum will be the current Virginia Standard Curriculum for the Advanced EMT or Virginia education standards as approved by the Office of EMS.

B. Certification for the Advanced EMT course will be awarded upon successful completion of written and practical examinations administered by the Office of EMS.

C. Advanced EMT certification practical testing will follow practical testing guidelines as approved by the Office of EMS.

12VAC5-31-1525. [~~EMT-Intermediate~~ Intermediate] certification.

A. The [~~EMT-Intermediate~~ Intermediate] curriculum will be the U.S. Department of Transportation National Standard Curriculum for the [~~Intermediate~~ EMT-Intermediate] 99 or a bridge program curriculum or Virginia education standards as amended and approved by the Office of EMS.

B. Certification for the [~~EMT-Intermediate~~ Intermediate] course will be awarded through reciprocity upon successful completion of written and practical examinations created and administered by the National Registry of Emergency Medical Technicians.

C. When the National Registry of Emergency Medical Technicians no longer tests EMT-Intermediate 99, the Board of Health will assume testing responsibilities for this level.

12VAC5-31-1527. [~~EMT-Paramedic~~ Paramedic] certification.

A. The [~~EMT-Paramedic~~ Paramedic] curriculum will be the National Standard Curriculum for the [~~EMT-Paramedic~~ or Paramedic] or a bridge program [~~curriculum~~] approved by the Office of EMS.

B. Certification for the [~~EMT-Paramedic~~ Paramedic] course will be awarded through reciprocity upon successful completion of written and practical examinations created and administered by the National Registry of Emergency Medical Technicians.

12VAC5-31-1529. Advanced life support bridge courses.

A. Bridge courses are designed to allow a candidate to advance from a lower level of ALS certification to a higher level of ALS certification or for a Virginia licensed registered nurse [~~(RN)~~] to bridge to the [~~EMT-Paramedic~~ Paramedic] certification level:

1. EMT-Enhanced to [~~EMT-Intermediate~~ Intermediate] Bridge.
2. [~~EMT-Intermediate~~ Intermediate] to [~~EMT-Paramedic~~ Paramedic] Bridge.
3. RN to [~~EMT-Paramedic~~ Paramedic] Bridge.

B. All bridge programs shall use the [~~minimum~~] training curriculum approved by the Office of EMS for the certification level of the program.

12VAC5-31-1530. ~~Certification examination retest.~~ (Repealed.)

~~A. A certification candidate may have up to two series of state certification examinations before being required to repeat an entire BLS or ALS certification program.~~

~~B. A certification candidate failing the written or practical certification examination of an exam series shall retest within 90 days from the date of the original examination.~~

~~C. A certification candidate failing a practical examination but passing the written examination of an exam series shall only repeat the practical examination of an exam series. A certification candidate failing the written examination but passing the practical examination shall only repeat the written examination for the exam series.~~

~~D. A certification candidate who has failed the retest of the initial examination series or has not taken the retest within the 90-day series retest period, shall satisfy the following before an additional certification test may be attempted:~~

- ~~1. Completion of the recertification CE-hour requirements for the level to be tested.~~
- ~~2. Receipt of a "Second Certification Testing Eligibility Notice" from the Office of EMS.~~

~~E. A certification candidate who has received a "Second Certification Testing Eligibility Notice" must pass both the written and practical certification examinations for the certification level.~~

~~F. A certification candidate who fails a retest during the second certification examination series must complete an initial certification program or applicable bridge course in order to be eligible for further certification examination.~~

~~G. A certification candidate shall complete all certification examination series within 12 months from the date of the first certification examination attempt. This 12-month maximum testing period may shorten the time available for retesting specified in subsection B of this section.~~

12VAC5-31-1531. Registered nurse to [~~EMT-Paramedic~~ Paramedic] bridge prerequisites.

RN to [~~EMT-Paramedic~~ Paramedic] students must be able to document compliance with the following prerequisites:

1. The candidate must be currently licensed as an RN in Virginia or as recognized through the Nursing Compact Agreement as approved by the Virginia Board of Nursing.
2. The candidate must currently hold certification as a Virginia EMT or higher certification.
3. The candidate must be currently participating as an EMS field provider or actively working as an RN.

12VAC5-31-1533. Registered [~~Nurse~~ nurse] to [~~EMT-Paramedic~~ Paramedic] bridge program completion requirements.

A. The RN to [~~EMT-Paramedic~~ Paramedic] bridge curriculum shall be the National Standard Curriculum for the

[~~EMT Paramedic~~ Paramedic] or a bridge program derived from this curriculum approved by the Office of EMS.

B. The student will receive formal instruction in all the objectives listed in the [~~EMT Paramedic~~ Paramedic] curriculum as recognized by the Office of EMS either through an accredited [~~EMT Paramedic~~ Paramedic] course or through a nursing education program as recognized by the Virginia Board of Nursing.

C. Certification for the RN to [~~EMT Paramedic~~ Paramedic] bridge course will be awarded through reciprocity upon successful completion of written and practical examinations created and administered by the National Registry of Emergency Medical Technicians.

12VAC5-31-1535. NREMT Paramedic endorsements.

A. Physician assistants (PA) or nurse practitioners (NP) may receive Virginia endorsement to sit for the National Registry of EMT's Paramedic written and practical examinations after providing verification of successful completion of the following criteria:

1. The PA or NP shall be currently Virginia certified as an EMT-Basic or may be allowed, with written permission from the Office of EMS, to complete the 36 hour EMT-Basic continuing education (CE) hours and successfully complete the EMT-Basic written and practical certification examination.
2. The PA or the NP shall receive endorsement from an EMS physician who verifies the candidate satisfies the paramedic competencies by completing a form as prescribed by the Office of EMS.
3. Team leader skills shall be completed and verified on a form as prescribed by the Office of EMS.

B. Third and fourth year medical students, and Virginia licensed dentists or chiropractors may receive Virginia endorsement to sit for the National Registry of EMT-Paramedic written and practical examinations after providing successful completion of the following criteria:

1. Must possess or have possessed pre-hospital ALS certification that must not have expired more than 24 months prior to submission.
2. Must be currently certified as a Virginia EMT-Basic.
3. Third and fourth year medical students shall submit a copy of their official medical school transcripts. Dentists or chiropractors shall submit to the Office of EMS a copy of their license to practice in Virginia.

12VAC5-31-1540. ~~Prohibition of oral examination administration. (Repealed.)~~

~~A certification candidate may not use another person or any electronic or mechanical means to translate certification examination material into an audible or tactile format.~~

Article 7

EMT Instructor, ALS Coordinator and EMS Education Coordinator

12VAC5-31-1541. [~~EMT instructor candidate~~ (Reserved.)]

[~~A. An EMS provider must comply with the following in order to be eligible to take the EMT instructor written examination:~~

- ~~1. Be a minimum of 21 years of age.~~
- ~~2. Hold current Virginia EMS certification as an EMT or higher Virginia EMS Certification level.~~
- ~~3. Have been certified as an EMT or higher level of EMS certification for a minimum of two years.~~
- ~~4. Must have a minimum of two years field experience as an EMS provider.~~
- ~~5. Proof of a high school diploma or equivalent.~~

~~B. The EMT instructor candidate must not have any EMS compliance enforcement issued within the previous twenty-four months or twenty-four months from the end date of the issued enforcement action.]~~

12VAC5-31-1542. [~~EMT Instructor~~ (Reserved.)]

[~~A. The instructor candidate shall successfully complete a written and practical pre test as approved by the Virginia Office of EMS.~~

~~B. The instructor candidate will successfully complete an instructor program as approved by the Virginia Office of EMS.]~~

12VAC5-31-1543. EMT instructor recertification.

[This section will expire on September 20, 1014.]

A. The EMT instructor's certification shall be renewed every two years. To fulfill the recertification requirements, the EMT instructor must:

1. Instruct a minimum of 50 hours of EMT or First Responder subject material in approved courses within the two-year certification period. This requirement only may be met through instruction of standard Basic Life Support training courses or other programs approved for Basic Life Support (Category 1) continuing education credit.
2. Successfully complete a minimum of one EMS instructor update within the two-year certification period.
3. Successfully complete the [~~EMT Basic EMT~~] written certification examination with a minimum passing score of 80%. This examination may be completed at any time following attendance of an EMS instructor update. If the EMT instructor is affiliated with a licensed EMS agency, this examination may be waived by the EMS agency's OMD.

B. Have no physical or mental impairment that would render the instructor unable to perform and evaluate all practical skills and tasks required of an EMT.

Regulations

12VAC5-31-1544. EMT instructor reentry.

[This section will expire on September 10, 2014.]

Individuals whose EMT instructor certification has expired may regain full certification through completion of the reentry program within two years of their previous expiration date provided:

1. If the EMT instructor has completed the teaching requirements but is unable to fulfill one or more of the remaining requirements, the remaining requirements for recertification shall be completed within two years following the expiration date. However, if the required [EMT Basic EMT] examination was not completed prior to expiration, this examination may not be waived by an EMS Agency OMD.

2. If the EMT instructor has not completed the teaching requirements, the following requirements will be necessary for reentry:

- a. Successful completion of the EMT instructor written and practical pretest examinations.
- b. Attendance of the administrative portions of an EMT instructor institute.

3. Upon completion of the applicable requirements for reentry, new EMT instructor credentials will be issued for a two-year period. Thereafter, all of the requirements for recertification under 12VAC5-31-1545 will apply.

12VAC5-31-1545. [~~Advanced Life Support coordinator program. (Reserved.)~~]

[An Advanced Life Support Coordinator may coordinate initial and continuing education training programs for EMT-Enhanced, Advanced EMT, EMT-Intermediate and EMT-Paramedic up to their level of EMS certification or other healthcare certification/licensure as approved by the Office of EMS.]

12VAC5-31-1546. [~~Advanced Life Support coordinator certification (Reserved.)~~]

[A. Prerequisites for certification as an Advanced Life Support coordinator are:

1. Must be a minimum of twenty one (21) years of age.
2. The Advanced Life Support coordinator candidate must not have any EMS compliance enforcement issued within the previous 24 months or two years from the end date of the issued enforcement action.
3. The applicant must hold current certification or licensure for one or more of the following issued by the Commonwealth of Virginia:
 - a. EMT Enhanced.
 - b. Advanced EMT.
 - e. EMT Intermediate.
 - d. EMT Paramedic.
 - e. Physician assistant.

f. Nurse practitioner.

g. Registered nurse.

h. Doctor of osteopathy.

i. Doctor of medicine.

B. A certification application shall be completed and submitted as prescribed by the Office of EMS.

C. Upon receipt of a complete Advanced Life Support coordinator application meeting the prerequisites and qualifications for certification, the applicant must attend an Advanced Life Support coordinator seminar.

D. Performance of any medical procedure is not permitted based upon Advanced Life Support coordinator certification.]

12VAC5-31-1547. Renewal of Advanced Life Support coordinator.

A. An ALS coordinator must maintain current certification as a Virginia ALS provider or licensure as a doctor of medicine, doctor of osteopathy, registered nurse, or physician assistant.

B. An ALS coordinator must resubmit an ALS coordinator certification application before his expiration month.

C. Successfully complete a minimum of one EMS instructor update or an ALS coordinator meeting within the two-year certification period.

D. A individual whose ALS coordinator certification has expired may regain full endorsement through completion of the reentry program within two years of his previous expiration date provided he:

1. Submits a completed ALS coordinator certification application; and
2. Successfully completes a minimum of one EMS instructor update or an ALS coordinator meeting within the two-year certification period.

12VAC5-31-1548. EMS education coordinator.

A. The EMS education coordinator may announce and teach courses at or below his provider certification level. An EMS education coordinator who certifies at a higher level may not begin announcing or coordinating courses at that level until they have attained one year of field experience at that level.

B. Performance of any medical procedure is not permitted based upon EMS education coordinator certification.

C. Current EMT instructors and ALS coordinators will be transitioned to EMS education coordinator within four years of (the effective date of these regulations).

12VAVC-5-31-1549. EMS education coordinator prerequisites.

Prerequisites for certification as an EMS education coordinator are:

1. Be a minimum of 21 years of age.
2. [Posses Possess] a high school diploma or equivalent.

3. [Hold current Virginia EMS certifications as an EMT or higher level Virginia EMS certification.]

~~[3- 4.] Have three years medical experience with a minimum of two years verified field experience as an EMS provider at the appropriate [level] EMS level or two years of current Virginia licensure as [an a] registered nurse, [physicians physician] assistant, doctor of osteopathic medicine, or doctor of medicine.~~

~~[4- 5.] Must not have any EMS compliance enforcement actions within the previous five years.~~

12VAC5-31-1550. Certification examination security. (Repealed.)

~~A person found to have given or obtained information or aid before, during or following a certification examination may be subject to disqualification of eligibility for certification examination and to further enforcement action. Unauthorized giving or obtaining of information will include but not be limited to:~~

- ~~1. Unauthorized access to a certification examination question;~~
- ~~2. Copying, reproducing or obtaining all or any portion of material from a certification examination;~~
- ~~3. Divulging any material from a certification examination;~~
- ~~4. Altering in any manner the response of a certification candidate, except by the Office of EMS;~~
- ~~5. Providing false certification or identification on any certification examination form;~~
- ~~6. Taking a certification examination on behalf of another person; or~~
- ~~7. Participating in, directing, aiding, or assisting in any of the acts prohibited by this section.~~

12VAC5-31-1551. EMS education coordinator certification process.

A. Eligible EMS education coordinator candidates will submit an application to include endorsement from an EMS physician.

B. Upon receipt and verification of the application, the eligible EMS education coordinator candidate will [be required to receive an eligibility to test letter and must] complete a written and practical examination.

[1. The EMS education coordinator application is valid for a period of two years from either primary test attempt date or 180 days after the application is approved, whichever is less. During this period of time, the candidate cannot submit another EMS education coordinator application.

2. An EMS education coordinator candidate written testing process shall have a primary and secondary attempt.

a. Primary written testing attempt is the first attempt at the EMS education coordinator written testing process.

b. Primary retest requires the candidate to retest the written test within 90 days of the date the primary test was attempted.

c. Secondary written testing occurs when a candidate fails the primary attempt and either fails the primary retest or does not retest within 90 days of the primary written attempt.

d. Secondary written test eligibility is initiated 90 days from the date of the failed primary retest or 180 days after the date of the failed primary test, whichever is less.

e. Secondary written retest requires the candidate to retest the written test within 90 days of the date the secondary test was attempted.

3. An EMS education coordinator candidate practical testing process shall have a primary and secondary attempt which cannot begin before the written primary test.

a. Primary practical testing attempt is the first attempt at the EMS education coordinator practical testing process.

b. Primary retest requires the candidate to retest that portion of the practical test failed. Same day retesting is allowed only if the candidate fails less than 75% of the practical test.

c. Secondary practical testing is initiated after practical primary retest failure and requires the candidate test all practical stations.

d. Secondary retest requires the candidate to retest that portion of the practical test failed. Same day retesting is allowed only if the candidate fails less than 75% of the secondary attempt on the practical testing.]

C. After successfully completing the written and practical examination, the qualified eligible EMS education coordinator candidate shall attend training as required by OEMS.

[D. All components of the EMS education coordinator certification process must be completed within two years from the end of the month of the primary test attempt or 180 days after approved and eligibility for testing is initiated, whichever is less.]

12VAC5-31-1552. EMS education coordinator recertification process.

A. To be eligible to recertify, the EMS education coordinator shall:

1. Maintain his provider certification.
2. Teach a minimum of 50 hours of initial certification or Category 1 CE and provide documentation of completion submitted in a process established by OEMS.
3. Complete one EMS education coordinator update in the [two-year three-year] certification period.
4. Complete a minimum of 12 hours of instructor focused continuing education.

Regulations

5. Submit an EMS education coordinator application to include endorsement from an EMS Physician.

B. Upon completion of the recertification requirements, the EMS education coordinator will receive an "Eligibility Notice" and must take and pass the EMS education coordinator recertification examination.

C. All recertification requirements must be completed and submitted to OEMS prior to the certification expiration date.

12VAC5-31-1553. EMS education coordinator reentry.

A. If an EMS education coordinator does not complete or submit all recertification requirements prior to his expiration date, he will go into a two-year reentry period.

B. During the reentry, the EMS education coordinator will not be allowed to coordinate any certification [~~of~~ or] CE courses. Any current courses in progress at the time of loss of EMS education coordinator certification will be suspended.

C. All outstanding recertification requirements shall be completed during the reentry period.

D. Failure to complete all recertification requirements during the reentry period will require the provider to complete the entire certification process as prescribed in 12VAC5-31-1551.

12VAC5-31-1560. BLS course coordinator reimbursement. (Repealed.)

A. The BLS course coordinator for approved first responder and emergency medical technician certification courses and Category 1 "Required" CE programs is eligible to request reimbursement. Reimbursement is designed to cover estimated costs for instruction and coordination of approved programs.

B. A BLS course coordinator is eligible for reimbursement if he is not receiving payment or reimbursement from any source other than a rescue squad or other emergency medical services organization that operates on a nonprofit basis exclusively for the benefit of the general public for instruction of the same course.

1. Fees not exceeding actual cost may be charged to students for textbooks, handouts, disposable medical supplies, other course materials and payment of assisting instructors actually utilized in the course. Upon request, a schedule of fees charged shall be provided to the Office of EMS.

2. Tuition enrollment or institutional fees charged students for taking the course may be reason for denial of reimbursement payment.

3. The sponsoring rescue squad or other emergency medical services organization may make payment to the course coordinator in an amount up to the hourly reimbursement rate established by the Office for BLS programs.

C. Requirements for Reimbursement Approval. A BLS course coordinator requesting reimbursement shall complete

and sign the "Independent Contractor" agreement section of the Course Approval Request form.

1. A BLS course coordinator requesting reimbursement is an "Independent Contractor" and is not an employee of the Office of EMS or any agency of the Commonwealth of Virginia while fulfilling this independent contractor agreement.

2. The training program shall be "open" to any qualified student up to the maximum of 30 allowed in a single program. No requirement for specific agency or employment affiliation may be imposed to limit or exclude enrollment by any individual in reimbursed courses.

3. There shall be a minimum enrollment of 13 students at the start of the program to qualify for full reimbursement, unless the Office of EMS has granted specific prior approval.

a. Programs with enrollments of less than 13 students at the time of instruction of the third lesson of the course curriculum shall submit a "Small Course Special Approval Request" form to the Office of EMS. This form requires justification of the need for continued instruction of this program for reimbursement.

b. Programs approved for reimbursement with enrollments of less than 13 will be reimbursed at a lower rate than larger programs.

4. "Small Course Special Approval Request" forms will be reviewed by Office of EMS staff and returned to the course coordinator indicating approval or denial. Programs are initially approved for reimbursement based upon the information provided at the time of request. Failure to properly coordinate and instruct the program, or other violations of applicable sections of these regulations may be deemed as grounds to deny or modify reimbursement payments at course completion.

D. Final Payment. Upon course completion, and after all requirements of these regulations and the reimbursement contract have been satisfied, the course coordinator may request reimbursement.

1. To make application for payment, the Reimbursement Claim Form shall be submitted to the Office of EMS for review and final approval.

2. A course coordinator may request that payment be made out in his name or that of a sole proprietorship or partnership he operates as a principal party. Checks made to organizations require submission of the business' federal employers identification number (FEIN) in place of the course coordinator's social security number in these cases. Reimbursement may not be paid to anyone other than the course coordinator who announced and contracted for the involved course.

Article 8
EMS Training Fund

12VAC5-31-1561. EMS training fund.

The Board of Health has established the emergency medical services training fund (EMSTF) to support certification and continuing education for BLS and ALS programs. Funding for various approved training programs will be administered on a contract basis between the EMT instructor, ALS coordinator, or EMS educational coordinator and the Office of EMS. [~~In addition, a tuition reimbursement component has been established to help defray the costs associated with obtaining initial certification.~~]

12VAC5-31-1563. Contracting through the EMS training fund.

The Board of Health promulgates funding contracts for EMS training programs annually on July 1. Only EMT instructors, ALS coordinators, or EMS educational coordinators are eligible to submit funding contracts. The requirements of the funding contracts supersede these regulations as they are legal documents.

12VAC5-31-1565. [Individual tuition reimbursement. (Reserved.)]

[~~A. Individual reimbursement is provided for expenses incurred by students who attend initial certification programs that received funding from the EMSTF program. Funding is made available to any certified and affiliated EMS provider in the Commonwealth.~~

~~B. Reimbursement will be awarded based upon tuition expenses incurred by the student (minus grants and scholarships) up to the maximum amount defined in the EMSTF program. Funding for individual tuition reimbursement is determined by the Office of EMS based upon the EMSTF tuition award formula. There are two different funding levels:~~

- ~~1. Non EMSTF funded initial certification programs, and~~
- ~~2. EMSTF funded initial certification programs.~~

~~C. Individual requests for tuition reimbursement require that the applicant:~~

- ~~1. Be a Virginia certified EMS provider at the level of the program for which tuition is requested.~~
- ~~2. Submit a completed application as prescribed by the Office of EMS.~~
- ~~3. Ensure the submitted application shall be postmarked to the Office of EMS within 180 days of the applicant receiving Virginia certification at the level for which the tuition reimbursement is sought.~~
- ~~4. Not submit or have previously submitted at the current level his name for reimbursement under the organizational tuition reimbursement process.~~

~~D. Falsification of information shall nullify the tuition reimbursement request and any subsequent requests for a period of five (5) years.]~~

12VAC5-31-1567. [Organizational tuition reimbursement (Reserved.)]

[~~A. Reimbursement is provided for tuition expenses incurred by EMS agencies or governmental organizations that pay for students to attend initial certification programs.~~

~~B. Funding is made available to include but is not limited to:~~

- ~~1. 501(c) (3) organizations.~~
- ~~2. Governmental organizations.~~
- ~~3. Individuals who are not considered for profit entities.~~

~~C. Reimbursement will be awarded based upon tuition expenses (minus grants and scholarships) up to the maximum amount defined in EMSTF program. Funding for organizational tuition reimbursement is determined by the Office of EMS based upon the EMSTF tuition award formula. There are two different funding levels:~~

- ~~1. Non EMSTF funded initial certification programs, and~~
- ~~2. EMSTF funded initial certification programs.~~

~~D. Organizational requests for tuition reimbursement require that the applicant:~~

- ~~1. Submit a request for providers who are affiliated with a Virginia EMS agency that is capable of delivering care at the level of certification for which the EMS agency is seeking tuition reimbursement.~~
- ~~2. Submit a completed application as prescribed by the Office of EMS.~~
- ~~3. Ensure the submitted application for tuition reimbursement is received by the Office of EMS within 180 days of the provider receiving Virginia certification at the level for which the tuition reimbursement is sought. Documents must be postmarked before the deadline in order to be accepted.~~
- ~~4. Complete a separate application for each type of program or level for which tuition reimbursement is being requested.~~
- ~~5. Ensure that no provider on the application has been submitted, or has previously submitted at the current level, for reimbursement under the individual tuition reimbursement process.~~

~~E. Falsification of information shall nullify the tuition reimbursement request and any subsequent requests for a period of five years.]~~

12VAC5-31-1570. EMS training grant program. (Repealed.)

A reimbursement fund has been established to support certification and continuing education programs through the "Virginia Rescue Squad Assistance Fund" grant program. Reimbursement for coordination and instruction of approved programs will be administered through the separate regulations established for the "Virginia Rescue Squad Assistance Fund."

Regulations

12VAC5-31-1580. Certification period. (Repealed.)

~~An EMS certification may be issued for the following certification period unless suspended or revoked by the Office of EMS:~~

- ~~1. A BLS certification is valid for four years from the end of the month of issuance, except as noted below.~~
- ~~2. An ALS certification is valid for three years from the end of the month of issuance. An EMS provider with ALS certification may be simultaneously issued an EMT certification for an additional two years.~~
- ~~3. An EMT instructor certification is valid for two years from the end of the month of issuance. An EMS provider with EMT instructor certification may be simultaneously issued an EMT certification for an additional two years.~~

12VAC5-31-1590. Certification through reciprocity. (Repealed.)

~~Upon demonstration of Virginia residency, Virginia EMS agency affiliation or a recognized need for Virginia EMS certification, a person holding valid EMS certification from another state or a recognized EMS certifying body with which Virginia has a formal written agreement of reciprocity may be issued a certification.~~

12VAC5-31-1600. Certification through legal recognition. (Repealed.)

~~Upon demonstration of Virginia residency, Virginia EMS agency affiliation or a recognized need for Virginia EMS certification, a person holding valid EMS certification from another state or a recognized EMS certifying body with which Virginia does not have a formal written agreement of reciprocity but who has completed a training program in compliance with the minimum training standards established by the National Standard Curriculum for the level requested, may be issued certification for a period of one year or the duration of their current certification, whichever is shorter. Legal recognition is not available for any Virginia certification level if the Office of EMS has determined that no equivalent National Standard Curriculum exists at the level requested.~~

Article 9

Accreditation of EMS Programs

12VAC5-31-1601. Accreditation of EMS training programs.

A. Training programs that lead to eligibility for initial certification at the Advanced EMT, [~~EMT-Intermediate~~ Intermediate] and [~~EMT-Paramedic~~ Paramedic] level shall hold a valid accreditation issued by the Board of Health before any training programs are offered.

B. All certification programs seeking accreditation in Virginia shall comply with these regulations and the current version of the Standards and Guidelines for an Accredited Educational Program for the Emergency Medical Services Profession established by the Committee on Accreditation of

Educational Programs for the Emergency Medical Services Professions (CoAEMSP) or an equivalent organization approved by the Board of Health.

C. The program director for an Advanced EMT, [~~EMT-Intermediate~~ Intermediate], EMT-Enhanced (optional track) or EMT (optional track) program is exempt from the bachelor's degree requirement as specified by CoAEMSP standards.

D. The medical director required by CoAEMSP standards shall also meet the requirements for an OMD or PCD as required by these regulations.

E. All accredited programs shall notify the Board of Health immediately upon receiving notice about the following changes:

1. Program personnel to include:
 - a. The program director;
 - b. OMD or PCD; and
 - c. Primary faculty or instructional staff.
2. Additions or deletions to clinical site contracts and field site contracts.
3. Location.
4. Learning or teaching modalities.
5. Any sentinel event.

12VAC5-31-1603. Sentinel events.

In cases where a sentinel event occurs, the commissioner may:

1. Place a program on probationary accreditation until the sentinel event is satisfactorily resolved; or
2. Revoke accreditation for the program.

12VAC5-31-1605. Initial accreditation.

A. The initial accreditation process will begin upon the receipt by the Board of Health of an application for accreditation and a completed institutional self study.

B. EMT-Paramedic programs can obtain initial accreditation in one of two ways:

1. State accreditation by applying to the Board of Health for an initial grant of accreditation not to exceed five years.
2. Programs achieving accreditation issued by CoAEMSP or an equivalent organization approved by the Board of Health shall apply to the Office of EMS for state accreditation. Full accreditation will be issued for a period concurrent with that issued by the CoAEMSP or other approved organization up to a maximum of five years.

C. Advanced EMT and [~~EMT-Intermediate~~ Intermediate] programs can obtain accreditation by applying to the Board of Health for an initial grant of accreditation not to exceed five years.

D. EMT-Enhanced programs (optional track) can obtain accreditation by applying to the Board of Health for an initial grant of accreditation not to exceed five years.

E. EMT programs (optional track) can obtain accreditation by applying to the Board of Health for an initial grant of accreditation not to exceed five years.

F. The commissioner shall grant initial accreditation as follows:

1. The commissioner will issue full accreditation for a period of five years from the accreditation date if the accreditation analysis determines that the training program is in full compliance with the requirements for accreditation outlined in the appropriate section of EMS regulations.

2. The commissioner will issue provisional accreditation if the accreditation analysis and report identifies deficiencies that are determined to be of concern but do not justify prohibiting the program from starting and completing an initial training program. Before starting any additional certification courses, the program site must receive full accreditation by correcting the deficiencies identified in the accreditation analysis and report.

3. The commissioner will issue an accreditation denied status to the applicant if the accreditation analysis and report identifies deficiencies that are determined to be sufficient to prohibit the program from starting an initial training program.

12VAC5-31-1607. Renewal of accreditation.

A. [~~EMT Paramedic~~ Paramedic] program applicants shall only be renewed by obtaining a valid accreditation from the Committee on Accreditation of Allied Health Education Programs (CAAHEP), CoAEMSP or an equivalent organization approved by the Board of Health.

B. Advanced EMT and [~~EMT Intermediate~~ Intermediate], or EMT-Enhanced or EMT as optional tracks programs shall apply for renewal of their program accreditation not less than 270 days before the end of their current accreditation cycle. [~~Reaccreditation~~ Reaccreditation] will require submitting a new application for accreditation and an updated institutional self study. The institutional self study will be reviewed by a site review team which will determine the program's performance and provide the commissioner with a recommendation as to whether program accreditation should be renewed.

1. The commissioner will issue full accreditation for a period of five years from the [~~reaccreditation~~ reaccreditation] date if the accreditation analysis determines that the training program is in full compliance with the requirements for accreditation outlined in the Virginia EMS regulations.

2. The commissioner will issue provisional [~~reaccreditation~~ reaccreditation] if the accreditation analysis and report identifies deficiencies that are determined to be of concern but do not justify prohibiting the program from starting and completing an initial training program. Before starting any additional

certification courses, the program site shall receive full accreditation by correcting the deficiencies identified at the reaccreditation date.

3. The commissioner shall issue an accreditation denied status to the applicant if the accreditation analysis identifies deficiencies that are determined to be sufficient to prohibit the program from starting an initial training program.

12VAC5-31-1609. Accreditation of alternative locations and learning sites.

A. Accredited training programs in Virginia shall contact the Board of Health for accreditation of alternative training sites which differ from the site receiving initial accreditation.

B. Institutions that intend to operate entire programs or parts of programs at a different location or learning site shall prepare and submit on a form prescribed by the Board of Health for each additional location.

12VAC5-31-1610. Certification through equivalency. (Repealed.)

~~A Virginia licensed practical nurse, registered nurse (to include those recognized through the Nurse Licensure Compact (§ 54.1-3030 et seq. of the Code of Virginia)), physician assistant or military corpsman with current credentials may be issued EMT certification through equivalency after completing the requirements of 12VAC5-31-1640 B, including passing a written and practical certification examination.~~

12VAC5-31-1611. Appeal of site accreditation application results.

Appeals by a program concerning the (i) denial of initial or renewal of accreditation or (ii) issuance of probationary accreditation shall be submitted in writing within 10 days to the Office of EMS pursuant to § 2.2-4019 of the Virginia Administrative Process Act.

12VAC5-31-1613. Accreditation of [~~EMT Paramedic~~ Paramedic] programs.

A. [~~EMT Paramedic~~ Paramedic] programs with state accreditation shall be limited to one initial grant of state accreditation for a five year period.

B. Renewal of [accreditation] at the [~~EMT Paramedic~~ Paramedic] level will be issued only upon verification of accreditation issued by CoAEMSP, CAAHEP, or another approved equivalent accreditation organization as specified in this chapter.

12VAC5-31-1615. Equivalent accreditation of EMS programs.

A. The commissioner may issue an equivalent accreditation to programs obtaining a valid accreditation from the CAAHEP, CoAEMSP, or an equivalent organization approved by the Board of Health.

B. As a condition for equivalent accreditation, a representative from the Board of Health must be included

Regulations

with each visit by the CoAEMSP or any other approved accreditation organization.

1. Programs with equivalent accreditation shall notify the Board of Health immediately upon receiving notice about the following changes:

a. Scheduling of site team visits to include:

(1) Dates;

(2) Times; and

(3) The agenda or schedule of events.

b. Changes in program personnel to include:

(1) The program director; and

(2) OMD or PCD.

c. Changes or additions to, or deletions from clinical site contracts and field site contracts.

d. Notice of revocation, removal, or expiration of accreditation issued by CoAEMSP.

e. Any sentinel event.

2. Accreditation issued by CoAEMSP or other organization approved by the Board of Health shall remain current during any certification training program that requires accreditation by the Board of Health. Revocation, removal, or expiration of accreditation issued by CoAEMSP or other another organization approved by the Board of Health shall invalidate the corresponding state accreditation of the training program.

12VAC5-31-1620. Certification through reentry. (Repealed.)

~~A. An EMS provider whose EMS certification has expired within the previous two years may be issued certification after completing the requirements of 12VAC5-31-1640 B, including passing a written or practical certification examination, or both, as required by the Office of EMS. An EMS provider who fails to complete the reentry process by the end of the two year period following expiration is required to complete an initial certification program.~~

~~B. An EMS provider who has resided outside of Virginia for a minimum of two years, has maintained certification through another state or the national registry of EMTs and whose eligibility to regain certification through reentry has expired, may be issued certification through 12VAC5-31-1590 or 12VAC5-31-1600 as applicable.~~

12VAC5-31-1630. Voluntary inactivation of certification. (Repealed.)

~~Requests from individuals desiring to permanently surrender or downgrade their current certification on a voluntary basis will not be processed except upon verification of the individual's ineligibility for continued certification under these regulations (e.g., felony conviction, permanent disability, etc.).~~

~~1. Any individual holding a current EMS certification who is affiliated with a licensed EMS agency and no longer~~

~~wishes to practice at their current level of certification; may request to have their certification placed in inactive status by the Office of EMS.~~

~~2. Requests for inactive status will require a minimum inactive period of 180 days during which time requests for reinstatement to active status will not be allowed.~~

12VAC5-31-1640. EMS recertification requirement. (Repealed.)

~~A. An EMS provider must complete the requirements for recertification and the Office of EMS must receive the required documentation within the issued certification period to maintain a current certification.~~

~~B. An EMS provider requesting recertification must complete the CE hour requirements for the level to be recertified.~~

~~C. An EMS provider requesting recertification must pass the written state certification examination.~~

~~1. Except an EMS provider under legal recognition, 12VAC5-31-1600, must pass a written and practical EMS certification examination.~~

~~2. An EMS provider affiliated with an EMS agency may be granted an exam waiver from the state written certification examination by the OMD of the EMS agency, provided:~~

~~a. The EMS provider meets the recertification requirements including those established by the OMD; and~~

~~b. The EMS provider must submit a completed "Virginia EMS Certification Application" with the exam waiver approval signed by the EMS agency OMD, which must be received by the Office of EMS within 30 days following the expiration of his certification.~~

~~(1) If the "Virginia EMS Certification Application" form is received by the Office of EMS after the EMS provider's certification expiration date, the EMS provider may not practice at the expired certification level until a valid certification is received from the Office of EMS.~~

~~(2) If the "Virginia EMS Certification Application" form is received by the Office of EMS more than 30 days after the EMS provider's certification expiration date, his certification will be in reentry and he will be required to test pursuant to 12VAC5-31-1620.~~

12VAC5-31-1650. EMT instructor recertification. (Repealed.)

~~An EMT instructor requesting recertification must complete the following requirements within the two year certification period to maintain current certification:~~

~~1. Instruct a minimum of 50 hours in BLS certification courses or other programs approved for BLS (Category 1) CE hours;~~

~~2. Attend one EMT Instructor/ALS Coordinator Update Seminar;~~

3. Attend a minimum of 10 hours of approved continuing education. An instructor holding an ALS level certification is not required to attend these additional 10 hours of continuing education if his ALS certification is current at the time of EMT Instructor recertification;

4. Pass the EMT basic written certification examination with a minimum passing score of 80%. This examination may be attempted only after attending an EMT-Instructor/ALS Coordinator Update Seminar. If the EMT-instructor is affiliated with a licensed EMS agency, this examination may be waived by the EMS agency's OMD per 12VAC5-31-1580; and

5. Have no physical or mental impairment that would render the EMT Instructor unable to perform and evaluate all practical skills and tasks required of an EMT.

An EMT instructor's certification will revert back to his highest level of EMS certification remaining current upon expiration.

12VAC5-31-1660. EMT instructor reentry. (Repealed.)

An EMS provider whose EMT instructor certification has expired may regain certification through completion of the reentry program within two years of the expiration date of his EMT Instructor certification:

1. If the EMT instructor had completed the teaching requirements of subdivision 1 of 12VAC5-31-1650, but was unable to fulfill one or more of the requirements of subdivisions 2-5 of 12VAC5-31-1650, the remaining requirements shall be completed within two years following the expiration date. If the EMT basic examination required under subdivision 4 of 12VAC5-31-1650 was not completed before expiration, this examination may not be waived by an EMS agency OMD.

2. If an EMT instructor does not complete the teaching requirements of 12VAC5-31-1650, the following requirements will be necessary for reentry:

a. Successful completion of the EMT instructor written and practical pretest examinations as specified under 12VAC5-31-1480; and

b. Attendance of the administrative portions of an EMT-Instructor Institute.

12VAC5-31-1670. Continuing education categories. (Repealed.)

A CE hour may be issued for one of the following categories:

1. "Required" (Category 1). CE hours may be issued provided the objectives listed in the applicable "Basic Life Support Category 1 Training Modules" or "Advanced Life Support Category 1 Training Modules" are followed, a qualified instructor is present and available to respond to students, requirements for specific contact hours are met and the course coordinator complies with these regulations.

2. "Approved" (Category 2). CE hours may be issued provided that a qualified instructor is present and available to respond to students, topics are approved and the course coordinator complies with these regulations.

3. "Multimedia" (Category 3). CE hours may be issued for contact with periodicals, videotapes, and other multimedia sources provided that specific contact hours for the certification level involved are met.

12VAC5-31-1680. Submission of continuing education. (Repealed.)

A CE hour may be issued for attendance of a program approved by the Office of EMS provided:

1. A course coordinator must submit a CE record/scancard within 15 days of the course end date or the student's attendance of an individual lesson for an EMS provider attending a training program for recertification hours.

2. An EMS provider is responsible for the accuracy of all information submitted for CE hours.

12VAC5-31-1690. Recertification Eligibility Notice. (Repealed.)

An EMS provider who has satisfied the CE hours specified for his certification level may be issued a "Recertification Eligibility Notice" that remains valid until the expiration of the current certification period for the level indicated or the two year "reentry" period.

12VAC5-31-1700. ALS coordinator endorsement. (Repealed.)

A. A person applying for endorsement as an ALS coordinator must:

1. Be a minimum of 21 years of age.
2. Hold ALS certification or licensure as one of the following:
 - a. Registered nurse;
 - b. Physician assistant; or
 - c. Physician.

3. Submit an "ALS Coordinator Application" form with the required recommendations and supporting documentation of qualifications to the Office of EMS including:

a. A recommendation for acceptance from an EMS physician knowledgeable of the applicant's qualifications. If the applicant is an EMS physician, the support of another EMS physician is not required on his "ALS Coordinator Application."

b. A recommendation for acceptance of the applicant's qualifications from the regional EMS council or local EMS resource.

B. A separate ALS Coordinator Application is required for each region in which the applicant intends to coordinate ALS certification or CE programs. An application submitted for approval to serve in additional regions will not alter the expiration date of the current ALS coordinator endorsement

Regulations

and all regional endorsements will be due for renewal on the current expiration date.

~~C. An ALS coordinator candidate meeting the requirements for endorsement shall attend an ALS Coordinator Seminar.~~

~~D. An ALS coordinator candidate that completes all requirements for ALS coordinator endorsement may be issued an endorsement that is valid for two years. An ALS coordinator endorsement does not provide concurrent provider credentials at any EMS certification level.~~

~~E. An ALS coordinator endorsement alone does not authorize the performance of any medical procedure.~~

12VAC5-31-1710. ~~Renewal of ALS coordinator endorsement. (Repealed.)~~

~~A. An ALS coordinator shall maintain current and unrestricted certification as an ALS provider, or licensure as a registered nurse, physician assistant or physician.~~

~~B. An ALS coordinator shall resubmit an ALS coordinator application before the expiration date of his ALS coordinator endorsement. A separate ALS coordinator application is required for each region in which the applicant desires to continue to coordinate an ALS certification or CE programs.~~

~~C. An ALS coordinator must attend one EMT Instructor/ALS Coordinator Update Seminar within his certification period.~~

~~D. An ALS coordinator attempting to regain endorsement through the reentry program shall, within two years of his expiration date, complete the ALS coordinator application and the requirements of subsections A, B and C of this section.~~

12VAC5-31-1810. Qualifications for EMS physician endorsement.

A physician seeking endorsement as an EMS physician shall hold a current unrestricted license to practice medicine or osteopathy issued by the Virginia Board of Medicine. The applicant must submit documentation of his qualifications for review by the medical direction committee of the regional EMS council or local EMS resource on a form prescribed by the Office of EMS. The documentation required shall present evidence of the following:

1. Board certification in emergency medicine or that applicant is in the active application process for board certification in emergency medicine issued by a national organization recognized by the Office of EMS, or board certification in family practice, internal medicine, or surgery or is in the active application process for board certification in family practice, internal medicine, or surgery issued by a national organization recognized by the Office of EMS. As an applicant under this section, a physician must also submit documentation of successful course completion or current certification in ACLS, ATLS, and PALS or present documentation of equivalent education in cardiac care, trauma care, and pediatric care completed within the past five years.

~~2. Board certification in family practice, internal medicine or surgery or that applicant is in the active application process for board certification in family practice, internal medicine or surgery issued by a national organization recognized by the Office of EMS. As an applicant under this section, a physician must also submit documentation of successful course completion or current certification in ACLS, ATLS and PALS (or present documentation of equivalent education in cardiac care, trauma care and pediatric care) completed within the past five years.~~

~~3. 2. Completion of an EMS medical direction program approved by the Office of EMS within the past five years prior to submitting application for consideration of endorsement as an EMS physician.~~

~~4. 3. In the event that an EMS agency or training program is located in a geographic area that does not have available a physician meeting the requirements stated in subdivisions 1 or 2 of this section, or if an EMS agency has a specific need for a physician meeting specialized knowledge requirements (i.e., pediatrics, neonatology, etc.), then an available physician may submit their his qualifications to serve as an EMS physician under these circumstances. An EMS physician endorsed under this subsection by the Office of EMS is limited to service within the designated geographic areas area or agency of the recommending regional EMS councils or local EMS resources.~~

~~a. A physician seeking review for endorsement under this section may apply to any number of regional EMS councils or local EMS resources for service within each respective geographic service area.~~

~~b. A physician seeking endorsement under this section must provide documentation of successful course completion or current certification in cardiac care, trauma care, and pediatric care or equivalent education (such as ACLS, ATLS and PALS) completed within one year of endorsement. All or part of this requirement may be waived if the Office of EMS determines this training is not required due to the specialized nature of the EMS agency to be served.~~

12VAC5-31-1820. Application for EMS physician endorsement.

~~A. Physicians~~ A physician seeking endorsement as an EMS physician must make application on forms ~~prescribed~~ provided by the Office of EMS. ~~The physician must submit the application with all requested documentation of their qualifications to the regional EMS council or local EMS resource for review.~~

~~B. Upon receipt of the application, the regional EMS council or local EMS resource will review the physician's qualifications, verify credentials and review the application at the next scheduled meeting of the medical direction committee of the regional EMS council or local EMS resource. The review will specify either recommendation or rejection with justification documented on the physician's~~

~~application. The application will be submitted to the Office of EMS within 15 days of the review.~~

~~C. B.~~ The Office of EMS will review the application and the enclosed documents and notify the physician in writing of the status of his application within 30 days of receipt. Final disposition of an application may be delayed pending further review by the ~~EMS advisory board medical direction committee~~ Advisory Board Medical Direction Committee as applicable.

12VAC5-31-1830. Conditional endorsement.

~~Physicians who are otherwise eligible but who have not completed an approved EMS Medical Direction Program as required by 12VAC5-31-1810 within the past five years will be issued a conditional endorsement for a period of one year pending the completion of the following requirements:~~

- ~~1. Upon verification of EMS medical direction program attendance and the training required pursuant to 12VAC5-31-1810 at one four-hour "Currents" session within the one-year conditional endorsement, the Office of EMS will reissue endorsement with an expiration date five years from the date of original issuance.~~
- ~~2. If the conditional EMS physician fails to complete the required EMS medical direction program or the training pursuant to 12VAC5-31-1810 within the initial one-year period, his endorsement will lapse.~~

12VAC5-31-1840. Lapse of EMS physician endorsement.

A. If an EMS physician fails to reapply for endorsement prior to expiration, the Office of EMS will notify the EMS physician, ~~applicable regional EMS councils or local EMS resources,~~ and any EMS agency or training course that the EMS physician is associated with, of the loss of endorsement. Any training programs already begun may be completed under the direction of the involved EMS physician, but no other programs may be started or announced.

B. Any EMS agency notified of the loss of their OMD's EMS physician endorsement will be required to immediately obtain the services of another endorsed EMS physician to serve as operational medical director pursuant to Part II (12VAC5-31-300 et seq.) of these regulations.

C. Upon loss of EMS physician endorsement, a new endorsement may only be issued upon completion of the application requirements of these regulations.

12VAC5-31-1850. Change in EMS physician contact information.

An EMS physician must report any changes of his name, contact addresses and contact telephone numbers to the Office of EMS within ~~15~~ 30 days.

12VAC5-31-1860. Renewal of endorsement.

A. Continued endorsement as an EMS physician requires submission of an application for renewal to the Office of EMS before expiration of the five-year endorsement period. Renewal of an EMS physician endorsement is based upon the

physician's continuing to meet and maintain the qualifications specified in 12VAC5-31-1810.

B. Completion of equivalent related continuing education programs may be substituted for formal certification in ACLS, ATLS and PALS for the purposes of endorsement renewal. Acceptance of these continuing education hours is subject to approval by the Office of EMS.

C. An EMS physician must also attend a minimum of two "Currents" sessions as sponsored by OEMS within the five-year endorsement period.

12VAC5-31-1880. Agreement to serve as an operational medical director.

A. An EMS physician may serve as the sole operational medical director (OMD) or one of multiple OMDs required for licensure of an EMS agency.

B. The EMS physician shall enter into a written agreement to serve as OMD with the EMS agency. This agreement shall at a minimum incorporate the specific responsibilities and authority ~~specified below as defined in 12VAC5-31-590.~~

- ~~1. Must describe the process or procedure by which the OMD or EMS agency may discontinue the agreement with prior notification of the parties involved pursuant to 12VAC5-31-1910;~~
- ~~2. Must identify the specific responsibilities of each EMS physician if an agency has multiple OMDs; and~~
- ~~3. Must ensure that adequate indemnification exists for:

 - ~~a. Medical malpractice; and~~
 - ~~b. Civil liability.~~~~

12VAC5-31-1890. Responsibilities of operational medical directors.

A. Responsibilities of the operational medical director regarding medical control functions include but are not limited to medical directions provided directly to prehospital providers by the OMD or a designee either on-scene or through direct voice communications.

B. Responsibilities of the operational medical director regarding medical direction functions include but are not limited to:

1. Using protocols, operational policies and procedures, medical audits, reviews of care and determination of outcomes; for the purpose of establishing direction of education; and limitation of provider patient care functions.
2. Verifying that qualifications and credentials for the agency's patient care or emergency medical dispatch personnel are maintained on an ongoing basis through training, testing and certification that, at a minimum, meet the requirements of these regulations, other applicable state regulations and including, but not limited to, § 32.1-111.5 of the Code of Virginia.

Regulations

3. Functioning as a resource to the agency in planning and scheduling the delivery of training and continuing education programs for agency personnel.

4. Taking or recommending appropriate remedial or corrective measures for EMS personnel, consistent with state, regional and local EMS policies that may include but are not limited to counseling, retraining, testing, probation, and in-hospital or field internships.

5. Suspending certified EMS personnel from medical care duties pending review and evaluation. Following final review, the OMD shall notify the provider, the EMS agency and the Office of EMS in writing of the nature and length of any suspension of practice privileges that are the result of disciplinary action.

6. Reviewing and auditing agency activities to ensure an effective quality management program for continuous system and patient care improvement, and functioning as a resource in the development and implementation of a comprehensive mechanism for the management of records of agency activities including prehospital patient care and dispatch reports, patient complaints, allegations of substandard care and deviations from patient care protocols or other established standards.

7. Interacting with state, regional and local EMS authorities to develop, implement, and revise medical [] and [] operational [protocols consistent with the Code of Virginia] and dispatch protocols, policies [] and procedures designed to deliver quality patient care. This function includes the selection and use of appropriate medications, supplies, and equipment.

8. Maintaining appropriate professional relationships with the local community including but not limited to medical care facilities, emergency departments, emergency physicians, allied health personnel, law enforcement, fire protection and dispatch agencies.

9. Establishing any other agency rules or regulations pertaining to proper delivery of patient care by the agency.

10. Providing for the maintenance of written records of actions taken by the OMD to fulfill the requirements of this section.

12VAC5-31-1950. Physician endorsement exemptions.

A. ~~On January 1, 2003, endorsement~~ Endorsement as an EMS physician will be initially issued to each licensed physician currently recorded as having previously been endorsed to serve as an operational medical director by the Office of EMS. Issuance of an EMS physician endorsement will be subject to renewal pursuant to ~~12VAC5-31-1820~~ [12VAC5-31-1860].

B. EMS physicians initially endorsed through the "grandfather" clause who fail to request renewal before expiration will be subject to compliance with the full provisions of 12VAC5-31-1810 in order to regain endorsement as an EMS physician.

12VAC5-31-2330. Designation of a regional EMS council.

A. The Board of Health will designate a regional EMS council that satisfies the representation requirements in these regulations.

B. The designation of a regional EMS council will be based on:

1. The "Regional EMS Council Designation Manual" application process.

a. Completed application. Submitted applications missing any information requested will be considered incomplete and will not be processed for designation;

b. Completed Regional EMS Council Self-Assessment Checklist; comply with all indicated standards consistent with these regulations;

c. Current roster of the membership of the applicant organization's board of directors. The roster needs to show all members of the board of directors for the applicant, their addresses, e-mail addresses, phone numbers, and the constituency they represent;

d. Current approved bylaws. A copy of the most recently approved bylaws complete with adoption date;

e. Scope of services. This shall include data and information that demonstrates the qualifications of the applicant to plan, initiate, expand or improve the regional EMS delivery system;

f. Budget. A proposed budget for the first year of designation must illustrate costs associated with the applicant's proposed operations and programs as a designated regional EMS council;

g. EMS involvement. Documentation demonstrating how the applicant organization interacts with EMS agencies and personnel;

h. Policies and guidelines. Up-to-date policies and guidelines covering all aspects of the applicant's regional EMS councils operations, must show revision date of all changes made and be consistent with these regulations;

i. Directory of localities, hospitals and EMS agencies. A comprehensive directory of the localities, hospitals and EMS agencies the applicant organization will be serving.

2. ~~Hospital catchment areas for~~ A listing of all hospitals within the applicant's proposed geographic service delivery area. ~~Hospital catchment areas are the geographic area from which a hospital draws the majority of its patients.~~

3. The demonstrated capability to establish communitywide and regional programs.

4. An evaluation of prior performance as a designated regional EMS council.

C. The Office of EMS will evaluate the performance and effectiveness of a regional EMS council on a periodic basis.

12VAC5-31-2570. Correction order.

A. The Office of EMS may order the designated regional EMS council to correct a deficiency, cease any violations or comply with these regulations by issuing a written correction order as follows:

1. Correction orders may be issued in conjunction with any other enforcement action in response to individual violations or patterns of violations.
2. The Office of EMS will determine that a deficiency or violation exists before issuance of any correction order.

B. The Office of EMS will send a correction order to the agent of the designated regional EMS council by certified mail to his last known address or via personal service with written receipt. Notification will include, but not be limited to, a description of the deficiency or violation to be corrected, and the period within which the deficiency or situation must be corrected, which shall not be less than 30 days from receipt of such order, unless an emergency has been declared by the Office of EMS.

C. A correction order takes effect upon receipt and remains in effect until the deficiency is corrected or until the designation is suspended, revoked, or allowed to expire or until the order is overturned or reversed.

D. Should the designated regional EMS council be unable to comply with the correction order by the prescribed date, it may submit a request for modification of the correction order with the Office of EMS. The Office of EMS will approve or disapprove the request for modification of the correction order within 10 days of receipt.

E. The designated regional EMS council shall correct the deficiency or situation within the period stated in the order.

1. The Office of EMS will determine whether the correction is made by the prescribed date.
2. Should the designated regional EMS council fail to make the correction within the time period cited in the order, the Office of EMS may invoke any of the other enforcement procedures set forth in this part.

12VAC5-31-2740. Accountability for public funds.

A. A designated regional EMS council shall maintain a current operating statement, reflecting revenue and expenditures, available for review.

B. A designated regional EMS council shall have a current income and expenditure statement available at all governing board meetings.

C. A designated regional EMS council shall have an independent annual audit of financial records with management letters conducted by a certified public accountant.

D. A designated regional EMS council ~~may~~ shall have an independent ~~audit~~ review of financial records conducted by a ~~Certified Professional Accountant (CPA)~~ certified public accountant upon change of an executive director.

E. A designated regional EMS council shall retain all books, records, and other documents relative to public funds for six years after the close of the fiscal year the funds were received. The Office of EMS, its authorized agents, and/or state auditors shall have full access to and the right to examine any materials related to public funds during said period.

F. A designated regional EMS council shall follow generally accepted accounting principles for financial management.

G. A designated regional EMS council's governing board shall approve its annual fiscal year (July 1 through June 30) budget by July 15 of each year.

H. A designated regional EMS council shall comply with all appropriate federal and state tax-related reporting.

I. A designated regional EMS council shall follow generally accepted fund raising practices in the charitable field.

J. A designated regional EMS council shall have written policies that indicate by position, signatories of executed financial and contractual instruments.

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 (12VAC5-31)

- [~~Clinical Training Record, EMS TR 05 (rev. 4/95).~~
- ~~Training Program/Instructor Complaint Form, EMS TR 30 (rev. 8/93).~~
- ~~Virginia Course Approval Request Form, EMS TR 01 (rev.] 9/99) [7/08).~~
- ~~Consolidated Test Site Reimbursement Claim Form, EMS TR 02C (rev. 10/98).~~
- ~~Student Course Fee Summary for State Reimbursed BLS Training Programs, EMS TR 01 SF (rev. 9/97).~~
- ~~Application for EMS Variance/Exemption, EMS TR 10 (rev. 4/00).~~
- ~~Course Summary Form, EMS TR 03 (rev. 9/97).~~
- [EMT Clinical Training Summary Record, EMS.TR.05 \(rev. 8/12\).](#)
- [Training Program Complaint Form, EMS.TR.30 \(rev. 1/11\).](#)
- [Course Approval Request, EMS.TR.01 \(rev. 6/11\).](#)
- [CTS Payment Request Form, EMS.TR.CTS.001 \(rev. 6/12\).](#)
- [EMS Variance/Exemption Application for Providers, EMS 6036 \(rev. 6/11\).](#)
- [EMS Variance/Exemption Application for Agencies, EMS 6037 \(rev. 6/11\).](#)
- [Course Summary Form, EMS.TR.03 \(rev. 6/11\). \]](#)
- EMS Continuing Education (CE) Registration Card Scan Form, EM-156839:6543 (rev. 1/96).

Regulations

Virginia EMS Training Program Enrollment Form, EM-234503-1:6543 (rev. 1/01).

Virginia EMS Certification Application, EM-210983-5:65432 (rev. 1/97).

~~[Application for EMS Agency License, EMS AGENCY-APP (rev. 1/00).~~

~~Application for EMS Vehicle Permit, EMS-6010F (rev. 2/02).~~

~~Complaint Form (rev. 1/00).~~

~~OMD Personnel Information Form/Agreement To Serve, OMD-PIS (rev. 1/02).~~

~~Certified Advanced Life Support Coordinator Application, Certified ALS Coordinator Application 2000.doc (rev. 1/00).~~

~~Reimbursement Claim Form, EMS-TR-02 (rev. 5/99).~~

~~Small Course Approval Request Form, EMS-TR-01-S (rev. 9/99).~~

~~Pre-Hospital Patient Care Report, 5936-0225-1306 (rev. 6/01).~~

~~Registered Automated External Defibrillation Service Patient Care Incident Report, EMS-AED-001 (rev. 7/99).~~

~~Virginia Office of EMS BLS Course Student Information Package (rev. 1/1/05).~~

~~Virginia Office of EMS ALS Course Student Information Package (rev. 1/1/05).~~

~~Basic Life Support Individual Age, Clinical and Skill Performance Verification Record, EMS-TR-33 (rev. 1/06).~~

~~Basic Life Support Student Permission Form For Students Less Than 18 Years Old, EMS-TR-07 (rev. 1/05).~~

~~Physician Assistant & Nurse Practitioner Paramedic Program Competency Summary, EMS-TR-37 (rev. 7/06).~~

~~Institutional Self Study for Paramedic Programs Application for EMT Paramedic Accreditation (rev. 7/07).~~

~~Institutional Self Study for Intermediate Programs Application for EMT Intermediate Accreditation (rev. 7/07).~~

~~Alternative Site Application for EMS Programs In Virginia (rev. 7/07).~~

[Application for EMS Agency License \(rev. 8/12\).](#)

[Application for EMS Vehicle Permit and Instructions \(rev. 8/12\).](#)

[Complaint Report Form \(rev. 11/10\).](#)

[Operational Medical Director Agreement \(rev. 8/12\).](#)

[ALS-Coordinator Application, EMS-TR.31 \(rev. 11/11\).](#)

[Emergency Medical Services Medical Record \(rev. 6/10\).](#)

[BLS Course Student Information Package, EMS-TR.09 \(rev. 5/12\).](#)

[ALS Course Student Information Package, EMS-TR.10 \(rev. 5/12\).](#)

[BLS Individual Age, Clinical and Skill Performance Verification, EMS-TR.33 \(rev. 1/11\).](#)

[Student Permission Form For BLS Students Less Than 18 Years Old, EMS-TR.07 \(rev. 7/11\).](#)

[Physician Assistant & Nurse Practitioner Paramedic Challenge Competency Summary, EMS-TR.37 \(rev. 2/12\).](#)

[Program Accreditation Application, Instructions and Self Study - Paramedic \(rev. 7/12\).](#)

[Program Accreditation Application, Instructions and Self Study - Intermediate \(rev. 7/12\).](#)

[Alternative Site Application for EMS Programs in Virginia \(rev. 7/12\).](#)]

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-31)

~~[Standards and Guidelines for] an Accredited Education Program for [the Accreditation of Educational Programs in the Emergency Medical] Technician Paramedic [Services Professions. Essentials/Standards initially adopted in 1978, revised in 1989 and 1999, and 2005 by the American Academy of Pediatrics, American College of Cardiology, American College of Emergency Physicians, American College of Osteopathic Emergency Physicians, American College of Surgeons, American Society of Anesthesiologists, Commission on Accreditation of Allied Health Education Programs, National Association of Emergency Medical Services Educators, National Association of Emergency Medical Technicians, National Association of State Emergency Medical Services Directors, and National Registry of Emergency Medical Technicians.~~

~~Scope of Practice - Procedures for EMS Personnel, 2009, Virginia Office of Emergency Medical Services.~~

~~Scope of Practice - Formulary for EMS Personnel, 2009, Virginia Office of Emergency Medical Services.~~

~~American National Standard for High Visibility Safety Apparel and Headwear, ANSI/ISEA 107-2004, revised 2004, International Safety Equipment Association.~~

~~Virginia Standard Curriculum.~~

~~United States Department of Transportation National Standard Curriculum.~~

~~Guidelines for Video Broadcasting of EMS Educational Programs.~~

[Standards and Guidelines for an Accredited Education Program for the Accreditation of Educational Programs in the Emergency Medical Services Professions, adopted in 1978; revised in 1989, 1999, and 2005 by the American Academy of Pediatrics, American College of Cardiology, American College of Emergency Physicians, American College of Osteopathic Emergency Physicians, American College of Surgeons, American Society of Anesthesiologists, Commission on Accreditation of Allied Health Education Programs, National Association of Emergency Medical Services Educators, National Association of Emergency](#)

[Medical Technicians, National Association of State Emergency Medical Services Directors, and National Registry of Emergency Medical Technicians.](#)

[American National Standard for High-Visibility Safety Apparel and Headwear, ANSI/ISEA 107-2010, revised 2010, International Safety Equipment Association.](#)

[Scope of Practice - Procedures for EMS Personnel, April 6, 2011, Virginia Office of Emergency Medical Services, Virginia Department of Health.](#)

[Scope of Practice - Formulary for EMS Personnel, April 6, 2011, Virginia Office of Emergency Medical Services, Virginia Department of Health.](#)

[Virginia Emergency Medical Services Education Standards, July 2012, Virginia Office of Emergency Medical Services, Virginia Department of Health.](#)

[EMT-Enhanced: Virginia Curriculum, revised June 2008, Virginia Office of Emergency Medical Services, Virginia Department of Health and U.S. Department of Transportation, National Highway Traffic Safety Administration:](#)

[Read Me Notes \(revised June 2008\)](#)

[Overview \(revised June 2008\)](#)

[Preparatory \(revised June 2008\)](#)

[Airway \(revised June 2008\)](#)

[Patient Assessment \(revised June 2008\)](#)

[Trauma \(revised June 2008\)](#)

[Medical \(revised June 2008\)](#)

[Assessment Based Management \(revised June 2008\)](#)

[Appendices A and B \(revised June 2008\)](#)

[Clinicals \(October 18, 2001\)](#)

[Alternative Course Presentation Format, T-070, effective July 1, 2012, Virginia Office of Emergency Medical Services, Virginia Department of Health.](#)

[Alternative Course Presentation Formats for Continuing Education Programming, T-855, effective May 1, 2009, Virginia Office of Emergency Medical Services, Virginia Department of Health.](#)

[Handbook for Webcasting of Continuing Education Programming, revised May 2012, Virginia Office of Emergency Medical Services, Virginia Department of Health. \]](#)

VA.R. Doc. No. R08-877; Filed August 10, 2012, 11:24 a.m.



TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Proposed Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is claiming an exemption from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4; however, under the provisions of § 2.2-4031, it is required to publish all proposed and final regulations.

Title of Regulation: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (adding 13VAC10-180-50, 13VAC10-180-60; repealing 13VAC10-180-120).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Information:

September 24, 2012 - 10 a.m. - Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA

Public Comment Deadline: September 24, 2012 - 5 p.m.

Agency Contact: Paul M. Brennan, General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5798, or email paul.brennan@vhda.com.

Summary:

The proposed amendments (i) require the use of certified management companies for all tax credit developments, (ii) remove points for unit size, (iii) remove the amenity point categories for geothermal heat pumps and solar electric systems, (iv) increase the impact of the "per unit credit amount" and "per unit cost" point categories, (v) remove the adjustment in calculating points for developments in qualified census tracts, (vi) decrease the points needed for the minimum threshold score, (vii) remove the section of the regulations governing TCAP and Section 1602 funds, and (viii) make other miscellaneous administrative clarification changes.

13VAC10-180-50. Application.

Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments.

Application for a reservation of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information (including, without limitation, a market study that shows adequate demand for the housing

Regulations

units to be produced by the applicant's proposed development) as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

The application should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information, if applicable, needs to be included in the application to determine the feasible credit amount: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, development fees, and other costs and fees. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least \$10,000 per unit for developments financed with tax-exempt bonds and \$15,000 per unit for all other developments.

Each application shall include plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions

within the discretion or control of such owner of such site. Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) above. No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases or has the right to acquire or lease the site of the proposed development as described in the preceding sentence. In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), any site control document subject to approval of the partners of the seller does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

Each application shall include, in a form or forms required by the executive director, a certification of previous participation listing all developments receiving an allocation of tax credits under § 42 of the IRC in which the principal or principals have or had an ownership or participation interest, the location of such developments, the number of residential units and low-income housing units in such developments and such other information as more fully specified by the executive director. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the above information or any other information available to the authority, the executive director determines that the principal or principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant. No application will be accepted

from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and no longer participating in the federal low-income housing tax credit program.

Each application shall include, in a form or forms required by the executive director, a certification that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

The application should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

Each applicant shall commit in the application to provide relocation assistance to displaced households, if any, at such level required by the executive director. Each applicant shall commit in the application to use a property management company certified by the executive director to manage the proposed development.

If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

In any situation in which the executive director deems it appropriate, he may treat two or more applications as a single application. Only one application may be submitted for each location.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of

credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a 10-point scoring penalty per item.

After receipt of the applications, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

13VAC10-180-60. Review and selection of applications; reservation of credits.

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and
2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a

Regulations

partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those

satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$750,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for

developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.

a. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)

b. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (minus 50 points for failure to make timely submission)

b. (1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such

letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. (0 points)

c. Documentation in a form approved by the authority from the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located (including the certification described in the definition of revitalization area in 13VAC10-180-10) that the area in which the proposed development is to be located is a revitalization area and the proposed development is an integral part of the local government's plan for revitalization of the area. (30 points)

d. If the proposed development is located in a qualified census tract as defined in § 42(d)(5)(C)(ii) of the IRC and is in a revitalization area. (5 points)

e. Commitment by the applicant for any development without section 8 project-based assistance to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, ~~Commonwealth of Virginia Department of Behavioral Health and Developmental Services funds from Item 315-Z of the 2008-2010 Appropriation Act~~, or the Rural Development for a below-market rate loan or grant or Rural Development's interest credit used to reduce the interest rate on the loan financing the proposed development; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the

Regulations

applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause.)

h. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

i. Any proposed development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) with no other tax credit units in such census tract. (25 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

k. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) located in a pool identified by the authority as a pool with little or no increase in rent-burdened population. (up to minus 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool. The executive director may make exceptions in the following circumstances:

(1) Specialized types of housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures;

(2) Housing designed to serve as a replacement for housing being demolished through redevelopment; or

(3) Housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority.)

l. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool with an increasing rent-burdened population. (up to 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool)

3. Development characteristics.

~~a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual~~

~~gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)~~

~~b. a.~~ Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If a community/meeting room with a minimum of 749 square feet is provided. (5 points)

(b) Brick covering 30% or more of the exterior walls. (20 points times the percentage of exterior walls covered by brick)

(c) If all kitchen and laundry appliances (except range hoods) meet the EPA's Energy Star qualified program requirements. (5 points)

(d) If all the windows and glass doors meet the EPA's Energy Star qualified program requirements. (5 points)

(e) If every unit in the development is heated and cooled with either (i) heat pump equipment with both a SEER rating of 15.0 or more and a HSPF rating of 8.5 or more or (ii) air conditioning equipment with a SEER rating of 15.0 or more, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)

(f) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

(g) If each bathroom contains only WaterSense labeled faucets and showerheads. (2 points)

(h) If each unit is provided with the necessary infrastructure for high-speed cable, DSL or wireless Internet service. (1 point)

(i) If all the water heaters meet the EPA's Energy Star qualified program requirements; or any centralized commercial system that has a 95%+ efficiency performance rating, or any solar thermal system that meets at least 60% of the development's domestic hot water load. (5 points)

~~(j) If every unit in the development is heated and cooled with a geothermal heat pump that meets the EPA's Energy Star qualified program requirements. (5 points)~~

~~(k) If the development has a solar electric system that will remain unshaded year round, be oriented to within 15 degrees of true south, and be angled horizontally within 15 degrees of latitude. (1 point for each 2.0% of the development's electrical load that can be met by the solar electric system, up to 5 points)~~

~~(l) (j) If each bathroom is equipped with a WaterSense labeled toilet. (2 points)~~

~~(m) (k) If each full bathroom is equipped with EPA Energy Star qualified bath vent fans. (2 points)~~

~~(n) (l) New installation of continuous R-3 or higher wall sheathing insulation. (5 points)~~

~~(o) (m) If all cooking surfaces are equipped with fire prevention or suppression features that meet the authority's design and construction standards. (4 points for fire prevention or 2 points for fire suppression)~~

(2) The following points are available to applications electing to serve elderly and/or physically disabled tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units have an emergency call system. (3 points)

(c) If all bathrooms have an independent or supplemental heat source. (1 point)

(d) If all entrance doors to each unit have two eye viewers, one at 42 inches and the other at standard height. (1 point)

(3) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 b of this section is 70 points.

~~e. b.~~ Any nonelderly development or elderly rehabilitation development in which (i) the greater of 5 units or 10% of the units will be subject to federal project-based rent subsidies or equivalent assistance (approved by the executive director) in order to ensure occupancy by extremely low-income persons; and (ii) the greater of 5 units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and be actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility

requirements of § 504 of the Rehabilitation Act, and all the units described in (ii) above must include roll-in showers and roll-under sinks and ranges, unless agreed to by the authority prior to the applicant's submission of its application). (50 points)

~~d. c.~~ Any nonelderly development or elderly rehabilitation development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act). (30 points)

~~e. d.~~ Any nonelderly development or elderly rehabilitation development in which 4.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)

~~f. e.~~ Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus stops. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for northern Virginia, in which case, the development will receive 20 points if the development is ranked against other developments in such northern Virginia pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

~~g. f.~~ Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) US Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's architect is on the authority's list of LEED/EarthCraft certified architects. (15 points for a LEED Silver development, or a new construction development that is 15% more energy efficient than the 2004 International Energy Conservation Code (IECC) as measured by EarthCraft or a rehabilitation development that is 30% more energy efficient post-rehabilitation as measured by EarthCraft; 30 points for a LEED Gold development, or a new construction development that is 20% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 40% more energy efficient post-rehabilitation as

Regulations

measured by EarthCraft; 45 points for a LEED Platinum development, or a new construction development that is 25% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 50% more energy efficient post-rehabilitation as measured by EarthCraft.) The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving 30 or 45 points under this subdivision, provided however, any resulting increase in such development's eligible basis shall be limited to 5.0% of the development's eligible basis for 30 points awarded under this subdivision and 10% for 45 points awarded under this subdivision of the development's eligible basis.

~~h. Any development for which the applicant agrees to use an authority certified property manager to manage the development. (25 points)~~

~~i. g.~~ If units are constructed to include the authority's universal design features, provided that the proposed development's architect is on the authority's list of universal design certified architects. (15 points, if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

~~j. h.~~ Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus 0.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed, as controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments that contain at least the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)

b. Evidence that the principal or principals for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

c. Any applicant that includes a principal that was a principal in a development at the time the authority ~~reported~~ inspected such development ~~to the IRS for an uncorrected and discovered a~~ life-threatening hazard under HUD's Uniform Physical Condition Standards and such hazard was not corrected in the time frame established by the authority. (minus 50 points for a period of three years after the violation has been corrected)

d. Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three calendar years after the year the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate individual or individuals connected to the principal attend compliance training as recommended by the authority)

e. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

f. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. ~~(180~~ (200) points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. ~~(75~~ (100) points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director; negative points will be assessed using the percentage by which the total amount of the per unit cost amount of the proposed development exceeds the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development, ~~and the per unit credit amount for any building documented by the applicant to be located in both a revitalization area and either (i) a qualified census tract or (ii) difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.~~

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified

low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or

Regulations

qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of ~~500~~ 450 points (~~475~~ 450 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

During its review of the submitted applications, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 10% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive

director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of

intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as

rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) supplement such unreserved credits in such pools with additional credits from the Commonwealth's annual state housing credit ceiling for the following year for reservation and allocation, if in the reasonable discretion of the executive director, it serves the best interest of the plan, or (iv) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at

Regulations

least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in

whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director

therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the

applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year, if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Regulations

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development that (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for either (i) at least 50% of the units in the development or (ii) if HUD Section 811 funds are providing the rent subsidies, as close to, but not more than 25% of the units in the development. Any such reservations made in any calendar year may be up to 6.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

13VAC10-180-120. Application for Tax Credit Assistance Funds and Credit Exchange Funds. (Repealed.)

~~The American Recovery and Reinvestment Act of 2009 (Recovery Act), PL 111-5 (i) includes funds to be allocated to housing credit agencies from HUD under a program called the tax credit assistance program (TCAP) to facilitate the production of developments awarded low income housing tax credits in fiscal years 2007, 2008, and 2009, and (ii) permits the authority to monetize credits by exchanging eligible credits for cash grants, which can be used by the authority to finance the construction or acquisition and rehabilitation of qualified low income buildings.~~

~~Application for TCAP funds and credit exchange funds shall be filed with the authority on such form or forms as the executive director may from time to time prescribe or~~

~~approve, together with such documents and additional information as may be requested by the authority in order to comply with the Recovery Act, the IRC, and this chapter and to make an award of TCAP funds or credit exchange funds in accordance with this chapter. The executive director may establish criteria and assumptions to be used by the applicant in the calculation of the amounts of tax credits, TCAP funds, and credit exchange funds in the application; and any such criteria and assumptions may be indicated on the application form or instructions made available by the authority to applicants. Each applicant for TCAP funds and credit exchange funds shall commit in the application to comply with all federal requirements applicable to such funds.~~

~~The executive director may divide the amount of TCAP funds into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate to best meet the housing needs of the Commonwealth. Proposed developments to be financed by certain tax exempt bonds and eligible to receive credits pursuant to 13VAC10-180-100 that apply for TCAP funds will be scored and ranked pursuant to the requirements of 13VAC10-180-60 with all other applications applying for TCAP funds and credits. Such developments may be placed in pools with other applicants for TCAP funds or may be put in their own separate pool as the executive director deems appropriate.~~

~~For each application that may receive an award of tax credits and either TCAP funds or credit exchange funds or both, the executive director shall determine the amount, as of the date of the deadline for submission of applications for such funds, to be necessary for the financial feasibility of the development and its viability as a qualified low income development throughout the credit period under the IRC. The executive director may substitute TCAP funds for some or all of the credit exchange funds in the application or credit exchange funds for some or all of the TCAP funds requested in the application in such amounts as determined by the executive director to maximize the number of developments or units that are expected to benefit from the equity provided by tax credit investors. Any TCAP funds and credit exchange funds awarded to a proposed development shall be in the form of a grant or, if requested by the borrower, a loan. Such grant or loan shall (i) be subordinate to all other unrelated third party financing for the construction or acquisition and rehabilitation of the development; (ii) be secured by a deed of trust for the full amount of the grant or loan during the compliance period; and (iii) provided no conditions exist that would result in default under the deed of trust, be forgiven by the authority in part each year on a pro rata basis based upon the length of the extended use period.~~

Any tax credit developments that have received a reservation of tax credits pursuant to 13VAC10-180-60 in calendar years 2007 and 2008 may request the authority to exchange their tax credit allocation for credit exchange funds in an amount not to exceed the lesser of (i) \$.85 per \$1.00 of credit exchanged or (ii) the tax credit equity amount shown in their allocation application.

The executive director may place conditions and limitations on the availability and use of the grant or loan deemed necessary to comply with the provisions of the Recovery Act and the IRC. The executive director may also prescribe such deadlines for accomplishing certain milestones established by the executive director in the acquisition, construction or rehabilitation of the developments deemed necessary or desirable to ensure full use of TCAP funds and credit exchange funds within the timeframes established by the Recovery Act.

V.A.R. Doc. No. R13-3375; Filed August 20, 2012, 9:42 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Final Regulation

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

Title of Regulation: 18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-90, 18VAC85-80-100).

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

Effective Date: October 10, 2012.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

The amendments modify the meaning of the term "practice of occupational therapy" to (i) include the therapeutic use of occupations for habilitation and rehabilitation to enhance physical health, mental health, and cognitive functioning; and (ii) clarify that the practice of occupational therapy includes the design of adaptive equipment and assistive technologies and consultation

concerning the adaptation of sensory and social, as well as physical, environments.

Part IV

Practice of Occupational Therapy

18VAC85-80-90. General responsibilities.

A. An occupational therapist renders services of assessment, program planning, and therapeutic treatment upon request for such service. The practice of occupational therapy includes therapeutic use of occupations for habilitation and rehabilitation to enhance physical health, mental health, and cognitive functioning. The practice of occupational therapy may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

B. An occupational therapy assistant renders services under the supervision of an occupational therapist that do not require the clinical decision or specific knowledge, skills and judgment of a licensed occupational therapist and do not include the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a patient.

18VAC85-80-100. Individual responsibilities.

A. An occupational therapist provides assessment by determining the need for, the appropriate areas of, and the estimated extent and time of treatment. His responsibilities include an initial screening of the patient to determine need for services and the collection, evaluation and interpretation of data necessary for treatment.

B. An occupational therapist provides program planning by identifying treatment goals and the methods necessary to achieve those goals for the patient. The therapist analyzes the tasks and activities of the program, documents the progress, and coordinates the plan with other health, community or educational services, the family and the patient. The services may include but are not limited to education and training in basic and instrumental activities of daily living (ADL); the design, fabrication, and application of orthoses (splints); ~~guidance in the design,~~ selection, and use of adaptive equipment and assistive technologies; therapeutic activities to enhance functional performance; ~~pre~~occupational vocational evaluation and training; and consultation concerning the adaptation of physical, sensory, and social environments ~~for individuals who have disabilities~~.

C. An occupational therapist provides the specific activities or therapeutic methods to improve or restore optimum functioning, to compensate for dysfunction, or to minimize disability of patients impaired by physical illness or injury, emotional, congenital or developmental disorders, or by the aging process.

D. An occupational therapy assistant is responsible for the safe and effective delivery of those services or tasks delegated by and under the direction of the occupational therapist. Individual responsibilities of an occupational therapy assistant may include:

Regulations

1. Participation in the evaluation or assessment of a patient by gathering data, administering tests, and reporting observations and client capacities to the occupational therapist;
2. Participation in intervention planning, implementation, and review;
3. Implementation of interventions as determined and assigned by the occupational therapist;
4. Documentation of patient responses to interventions and consultation with the occupational therapist about patient functionality;
5. Assistance in the formulation of the discharge summary and follow-up plans; and
6. Implementation of outcome measurements and provision of needed patient discharge resources.

VA.R. Doc. No. R13-3347; Filed August 10, 2012, 8:31 a.m.

BOARD OF SOCIAL WORK

Proposed Regulation

Title of Regulation: 18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10, 18VAC140-20-40, 18VAC140-20-45, 18VAC140-20-51, 18VAC140-20-110).

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

Public Hearing Information:

October 15, 2012 - 9:45 a.m. - Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comment Deadline: November 9, 2012.

Agency Contact: Catherine Chappell, Acting Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email catherine.chappell@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Social Work the authority to determine the qualifications for licensure and reinstatement and to promulgate regulations to administer the regulatory system.

Purpose: The board has adopted amendments to make it less burdensome for persons who have been actively practicing as social workers or clinical social workers in another state to be licensed in Virginia. To do so, regulations need to clarify or define the intent and meaning of "active practice" to ensure current competency to practice. With active practice and no grounds for denial of licensure, the applicant could be licensed by credentials and the requirements for documentation of education and supervised experience could be eliminated.

The board has addressed an issue of competency for applicants who passed the national examination some years ago but were never licensed and never practiced social work

in any jurisdiction. To do so, a regulation is proposed to specify that the examination must have been passed within five years prior to application or the applicant must provide evidence of practice in an exempt setting in the category of social work for which he has applied to be licensed.

The board has addressed concerns about persons who are seeking to reinstate or reactivate a license that has been lapsed or inactive for four or more years. If the applicant has been practicing in another state during that period, that practice could serve as evidence of current competency; but if the applicant has not practiced social work for a number of years, there needs to be a period of supervised practice as evidence of competency.

By accepting active, unrestricted practice in other states as evidence of current competency to practice, the board may expand the applicant pool for licensure as clinical social workers to meet the growing need for mental health providers while protecting the health, safety, and welfare of the public such providers serve.

Substance: 18VAC140-20-40 and 18VAC140-20-51 are amended to address the problem of applicants who passed the examination a number of years prior to application but were never licensed in Virginia or in another jurisdiction. The amendment would require that the national licensing examination be passed within five years prior to application or, if the examination was passed before that time period, that the applicant demonstrate evidence of social work practice at the appropriate level (social worker or clinical social worker) within an exempt setting prior to application.

18VAC140-20-45 is amended to eliminate certain application requirements for licensure by endorsement applicants and, at the same time, to clarify the meaning of "active practice" to demonstrate competency in the field of social work. Currently, regulations require an applicant for licensure by endorsement to have actively practiced for 36 of the past 60 months; the amended regulation would provide an alternative of supervised experience equivalent to that required for licensure by examination.

18VAC140-20-110 is amended to address the issue of reactivation and reinstatement for applicants who have either not been practicing social work in recent years or practicing elsewhere in an exempt setting by requiring practice under supervision for at least 360 hours in the 12 months preceding licensure in Virginia.

Issues: The advantage to the public is greater assurance of current competency in knowledge and skill to practice, especially at the clinical level, by requiring recent passage of the licensure examination or evidence of practice in an exempt setting. Likewise, applicants who have allowed a license to lapse or who are inactive would have to demonstrate minimal competency or practice for a short time under supervision. Elimination of some burdensome requirements for licensure by endorsement may encourage social workers to come to Virginia for practice, thus

increasing the supply of practitioners. There are no disadvantages.

Currently, if an applicant is denied licensure or if there are questions about eligibility, credentialing issues must be resolved through a lengthy and costly administrative process involving the credentials committee or an informal conference and finally a formal hearing. By clarifying the regulations with more precise rules to follow, an applicant, board staff, and board members will all have a clearer understanding of the competency requirements for licensure and the board will incur less cost. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Social Work (Board) proposes to amend its Regulations Governing the Practice of Social Work to 1) add a definition for active practice, 2) require applicants for licensure to either pass the licensure examination within five years preceding application or provide proof of working in a setting that is exempt from licensure requirements for at least 360 hours per year for two of the five years preceding application, 3) require individuals who are seeking to reinstate an active license or reactivate an inactive license to provide proof of active practice (either in another jurisdiction or in an exempt setting) during three of the five years immediately preceding application or provide proof of 360 hours of supervised practice in the 12 months preceding application and 4) remove some requirements for licensure by endorsement.

Result of Analysis. There is insufficient information to accurately gauge whether benefits are likely to outweigh costs for several of these proposed changes. Benefits likely outweigh costs for at least one of these proposed changes.

Estimated Economic Impact. Under current regulations, individuals must pass a national competency exam in order to be licensed as a social worker or clinical social worker but there is no limitation on how long after passing the exam individuals have to apply for licensure. The Board proposes to require that individuals who are seeking licensure to either prove that they passed the licensure examination within the five years preceding application or provide proof of working in a setting that is exempt from licensure requirements for at least 360 hours per year for two of the five years preceding application.

The likely very small group of individuals who pass the licensure exam more than five years before they apply for licensure, and cannot prove that they have worked the proposed requisite number of hours in an exempt setting, will incur costs for retaking the licensure exam as well as fulfilling any new requirements (additional classes, etc) to take the exam if requirements have changed. The public will likely benefit from this change if there is a current malpractice problem that is likely caused by individuals starting to practice years after they initially passed their exam

or if information or best practices in these fields are changing so rapidly that a competency exam taken more than five years ago would not be substantively the same as an exam taken in the nearer term. There is insufficient information to know how many potential applicants for licensure might be affected or to quantify any benefit that might accrue to the public.

Currently, individuals who are seeking to reinstate or reactivate a Board issued license must pay a fee and provide proof that they have completed required continuing education. The Board proposes to also require that these individuals provide proof of active practice (either in another jurisdiction or in an exempt setting) during three of the five years immediately preceding application or provide proof of 360 hours of supervised practice in the 12 months preceding application. Licensees who have allowed their licenses to lapse or who have held an inactive license for a number of years, but who have not worked in another state or in an exempt setting, will have to work in a supervised setting (at a likely lower pay level) for at least 360 hours before they can reapply for active licensure. Interestingly, since individuals who are renewing an active license will not have to prove that they have actively practiced during the renewal cycle, licensees who plan to leave the work force for a number of years can avoid having to prove that they have been actively practicing by continuing to maintain an active license. The public will likely only benefit from this change if there is a current malpractice problem that is likely caused by individuals starting to practice after some years of inactivity.

Under current regulations, individuals who are seeking licensure by endorsement must prove that they have been licensed in good standing in another state and that that state has licensing standards that are substantially equivalent to the Board's standards for licensure. Board staff reports that this means applicants for licensure by endorsement now have to provide proof of education and supervised practice that they may not have maintained after they were initially licensed in their originating state. The Board proposes to remove language that requires substantially equivalent standards and instead require that licensure in an applicant's originating state be of a comparable type to that in Virginia. This proposed change will benefit individuals who are applying for licensure by endorsement because they will no longer have to maintain or recompile all of their original licensure documentation.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that the Board currently regulates 4,967 licensed clinical social workers and 349 licensed social workers. All of these entities, as well as any individuals who may wish to become licensed in the future, will be affected by these proposed regulations.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. The new time limitations for licensure in this regulatory action may slightly decrease

Regulations

the number of individuals who choose to work in professional fields that are regulated by the Board. Loosening the requirements for licensure by endorsement may slightly increase the number of individuals who choose to work in professional fields that are regulated by the Board. There is insufficient information to ascertain which effect will be larger.

Effects on the Use and Value of Private Property. To the extent that a professional license can be considered valuable private property that entitles an individual to work at a job that unlicensed individuals may not, placing new limitations on obtaining licensure and on license reinstatement/reactivation will slightly lower the value of licensees private property.

Small Businesses: Costs and Other Effects. DHP does not know how many affected entities would qualify as small businesses but does know that many licensed clinical social workers are small business independent practitioners. The new time limitations for licensure in this regulatory action will likely make it harder for individuals who have not practiced in their chosen field for several years to restart their businesses when they choose to return to work. Conversely, changes to requirements for licensure by endorsement will likely make it easier for licensed clinical social workers from other states to set up small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The Board could eliminate adverse effects for individuals who have passed the national exam but who have not chosen to seek licensure within a five year period, as well as for individuals who are seeking reinstatement or reactivation of licensure, by choosing not to promulgate new time limitations for licensure. Absent some history of disciplinary actions that could likely have been avoided if these restrictions had been in place, or some evidence that the material covered by the national exam changes frequently enough that the knowledge of individuals who passed that exam five years ago is stale, the public and licensees would likely benefit from the Board taking a second look at these proposed restrictions.

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 Board of Social Work concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC140-20, Regulations Governing the Practice of Social Work, relating to requirements for licensure.

Summary:

Regulations governing the practice of social work are amended to (i) require that the national licensing examination be passed within five years prior to application or, if the examination was passed before that time period, that the applicant demonstrate evidence of social work practice at the appropriate level (social worker or clinical social worker) within an exempt setting prior to application; (ii) eliminate certain application requirements for licensure by endorsement applicants and, at the same time, clarify the meaning of "active practice" to demonstrate competency in the field of social work and provide an alternative to the experience requirement; and (iii) address the issue of reactivation and reinstatement for applicants who have either been practicing in another U.S. jurisdiction or exempt setting, or have not been practicing in recent years by requiring active practice in three of the past five years immediately preceding application, or practice under supervision for at least 360 hours in the 12 months preceding licensure in Virginia.

Part I

General Provisions

18VAC140-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

Board

Casework

Casework management and supportive services

Clinical social worker

Practice of social work

Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Active practice" means post-licensure practice at the level of licensure for which an applicant is seeking licensure in Virginia and shall include at least 360 hours of practice in a 12-month period.

"Clinical course of study" means graduate course work which includes specialized advanced courses in human behavior and social environment, social policy, research, clinical practice with individuals, families, groups and a clinical practicum which focuses on diagnostic, prevention and treatment services.

"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services and treatment services, including but not limited to psychotherapy and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Exempt practice" is that which meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face supervision" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision.

"Nonexempt practice" is that which does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Supervisee" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision.

"Supervision" means a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors and evaluates the supervisee's social work practice while promoting development of the supervisee's knowledge, skills and abilities to provide social work services in an ethical and competent manner.

Part II
Requirements for Licensure

18VAC140-20-40. Requirements for licensure by examination as a licensed clinical social worker.

Every applicant for examination for licensure as a licensed clinical social worker shall:

1. Meet the education requirements prescribed in 18VAC140-20-49 and experience requirements prescribed in 18VAC140-20-50.
2. Submit in one package to the board office:

- a. A completed notarized application;
- b. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-50 along with documentation of the supervisor's out-of-state license where applicable. Applicants whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;
- c. The application fee prescribed in 18VAC140-20-30;
- d. Official transcript or transcripts in the original sealed envelope submitted from the appropriate institutions of higher education directly to the applicant; and
- e. Documentation of applicant's out-of-state licensure where applicable.

3. An applicant for licensure by examination shall provide evidence of passage of the examination prescribed in 18VAC140-20-70. If the examination was not passed within five years preceding application for licensure, the applicant may qualify by documentation of providing clinical social work services in an exempt setting for at least 360 hours per year for two of the past five years.

18VAC140-20-45. Requirements for licensure by endorsement.

Every applicant for licensure by endorsement shall submit in one package:

1. A completed application and the application fee prescribed in 18VAC140-20-30.
2. Documentation of social work licensure in good standing obtained by standards ~~substantially equivalent to those outlined in 18VAC140-20-49 and 18VAC140-20-50 for a licensed clinical social worker or 18VAC140-20-60 for a licensed social worker,~~ required for licensure in another jurisdiction as verified by the out-of-state licensing agency on a board-approved form. Licensure in the other jurisdiction shall be of a comparable type as the licensure that the applicant is seeking in Virginia.
3. Verification of a passing score as established by the board on a board-approved national exam at the level for which the applicant is seeking licensure in Virginia.
4. ~~Official transcript or transcripts in the school's original sealed envelope.~~
5. 4. Verification of active practice in another jurisdiction for 36 out of the past 60 months or evidence of supervised experience requirements substantially equivalent to those outlined in 18VAC140-20-50 and 18VAC140-20-60.

Regulations

6. 5. Certification that the applicant is not the respondent in any pending or unresolved board action in another jurisdiction or in a malpractice claim.

18VAC140-20-51. Requirements for licensure by examination as a licensed social worker.

A. In order to be approved to sit for the board-approved examination for a licensed social worker, an applicant shall:

1. Meet the education requirements prescribed in 18VAC140-20-60 A.
2. Submit in one package to the board office:
 - a. A completed notarized application;
 - b. The application fee prescribed in 18VAC140-20-30; and
 - c. Official transcript or transcripts in the original sealed envelope submitted from the appropriate institutions of higher education directly to the applicant.

B. In order to be licensed by examination as a licensed social worker, an applicant shall:

1. Meet the education and experience requirements prescribed in 18VAC140-20-60; and
2. Submit, in addition to the application requirements of subsection A, the following:
 - a. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-60 along with documentation of the supervisor's out-of-state license where applicable. An applicant whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;
 - b. Verification of a passing score on the board-approved national examination; and
 - c. Documentation of applicant's out-of-state licensure where applicable.

3. An applicant for licensure by examination shall provide evidence of passage of the examination prescribed in 18VAC140-20-70. If the examination was not passed within five years preceding application for licensure, the applicant may qualify by documentation of providing social work services in an exempt setting for at least 360 hours per year for two of the past five years.

18VAC140-20-110. Late renewal; reinstatement; reactivation.

A. A social worker or clinical social worker whose license has expired may renew that license within four years after its expiration date by:

1. Providing evidence of having met all applicable continuing education requirements.

2. Paying the penalty for late renewal and the biennial license fee for each biennium as prescribed in 18VAC140-20-30.

B. A social worker or clinical social worker who fails to renew the license for four years or more and who wishes to resume practice shall apply for reinstatement, pay the reinstatement fee and provide documentation of having completed all applicable continued competency hours equal to the number of years the license has lapsed, not to exceed four years. An applicant for reinstatement shall also provide evidence of competency to practice by documenting:

1. Active practice in another U.S. jurisdiction for at least three of the past five years immediately preceding application;

2. Active practice in an exempt setting for at least three of the past five years immediately preceding application; or

3. Practice as a resident under supervision for at least 360 hours in the 12 months immediately preceding licensure in Virginia.

C. A social worker wishing to reactivate an inactive license shall submit the renewal fee for active licensure minus any fee already paid for inactive licensure renewal, and document completion of continued competency hours equal to the number of years the license has been inactive, not to exceed four years. An applicant for reactivation shall also provide evidence of competency to practice by documenting:

1. Active practice in another U.S. jurisdiction for at least three of the past five years immediately preceding application;

2. Active practice in an exempt setting for at least three of the past five years immediately preceding application; or

3. Practice as a resident under supervision for at least 360 hours in the 12 months immediately preceding licensure in Virginia.

VA.R. Doc. No. R10-2415; Filed August 21, 2012; 2:00 p.m.

TITLE 22. SOCIAL SERVICES

BOARD OF SOCIAL SERVICES

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services has claimed 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 or the appropriation act where no agency discretion is involved. The State Board of Social Services will receive, consider, and

respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 22VAC40-41. **Neighborhood Assistance Tax Credit Program (amending 22VAC40-41-10, 22VAC40-41-20, 22VAC40-41-30, 22VAC40-41-50, 22VAC40-41-55).**

Statutory Authority: §§ 63.2-217 and 63.2-2002 of the Code of Virginia.

Effective Date: October 10, 2012.

Agency Contact: Wanda Stevenson, Neighborhood Assistance Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7924, FAX (804) 726-7946, or email wanda.stevenson@dss.virginia.gov.

Summary:

Amendments to the regulation (i) remove the definition of impoverished people, (ii) add a definition for a low-income person, (iii) add a definition for an eligible student with a disability, (iv) increase the tax credit from 40% to 65% of the donation value, (v) remove the \$500,000 allocation limit that an approved organization can receive if there are remaining credits after the initial allocation, (vi) change the requirement of low-income persons served from 50% to 40% and include eligible students with disabilities, (vii) allow a mediator to receive tax credits for providing services at the direction of an approved NAP organization regardless of where the service is delivered, and (viii) add marketable securities as a qualifying type of donation from an individual donor.

22VAC40-41-10. Definitions.

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

"Approved organization" means a neighborhood organization that has been found eligible to participate in the Neighborhood Assistance Program.

"Audit" means any audit required under the federal Office of Management and Budget's Circular A-133, or, if a neighborhood organization is not required to file an audit under Circular A-133, a detailed financial statement prepared by an outside independent certified public accountant.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 of the Code of Virginia. "Business firm" also means any trust or fiduciary for a trust subject to tax imposed by Article 6 (§ 58.1-360 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia.

"Commissioner" means the Commissioner of the Department of Social Services, his designee or authorized representative.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to ~~impoverished people~~ low-income persons.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth of Virginia as a contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of ~~impoverished people~~ low-income persons or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholastic assistance to ~~an individual who is impoverished~~ a low-income person or eligible student with a disability.

"Eligible student with a disability" means a student (i) for whom an individualized educational program has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education and (ii) whose family's annual household income is not in excess of 400% of the current poverty guidelines.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of ~~impoverished people~~ low-income persons.

~~"Impoverished people" means, for neighborhood organizations not providing education services, people in Virginia with incomes at or below 200% of the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 USC § 9902(2).~~

"Job training" means any type of instruction to an individual who is ~~impoverished~~ a low-income person that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Low-income person" means an individual whose family's annual household income is not in excess of 300% of the current poverty guidelines.

"Neighborhood assistance" means providing community services, education, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance ~~for impoverished people~~, and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code of 1986, as amended from time to time, or any

Regulations

organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 USC § 2701 et seq.), or any housing authority as defined in § 36-3 of the Code of Virginia.

"Professional services" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and shall include, but not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants, attorneys-at-law, and veterinarians.

"Scholastic assistance" means (i) counseling or supportive services to elementary school, middle school, secondary school, or postsecondary school students or their parents in developing a postsecondary academic or vocational education plan, including college financial options for such students or their parents, or (ii) scholarships.

22VAC40-41-20. Purpose; procedure for becoming an approved organization; eligibility criteria; termination of approved organization; appeal procedure.

A. The purpose of the Neighborhood Assistance Program is to encourage business firms and individuals to make donations to neighborhood organizations for the benefit of ~~impoverished people~~ low-income persons.

B. Neighborhood organizations that do not provide education services and that wish to become an approved organization must submit an application to the commissioner: Neighborhood organizations that provide education services must submit an application to the Superintendent of Public Instruction. The application submitted to the Superintendent of Public Instruction must comply with regulations or guidelines adopted by the Board of Education. The application submitted to the commissioner must contain the following information:

1. A description of their eligibility as a neighborhood organization, the programs being conducted, the ~~impoverished people~~ low-income persons assisted, the estimated amount that will be donated to the programs, and plans for implementing the programs.
2. Proof of the neighborhood organization's current exemption from income taxation under the provisions of § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code, or the organization's eligibility as a community action agency as defined in the Economic Opportunity Act of 1964 (42 USC § 2701 et seq.) or housing authority as defined in § 36-3 of the Code of Virginia.
3. A copy of the neighborhood organization's current audit, a copy of the organization's current federal form 990, a current brochure describing the organization's programs, and a copy of the annual report filed with the Department of Agriculture and Consumer Services' Division of Consumer Protection.

4. A statement of objective and measurable outcomes that are expected to occur and the method the organization will use to evaluate the program's effectiveness.

C. To be eligible for participation in the Neighborhood Assistance Program, the applicant must meet the following criteria:

1. Applicants must have been in operation as a viable entity, providing neighborhood assistance for ~~impoverished people~~ low-income people, for at least 12 months.
2. Applicants must be able to demonstrate that at least ~~50%~~ 40% of the total people served and at least 50% of the total expenditures were for ~~impoverished people~~ low-income persons or eligible students with disabilities.
3. Applicant's audit must not contain any significant findings or areas of concern for the ongoing operation of the neighborhood organization.
4. Applicants must demonstrate that at least 75% of total revenue received is expended to support their ongoing programs each year.

D. The application period will start no later than March 15 of each year. All applications must be received by the Department of Social Services no later than the first business day of May.

E. Those applicants submitting all required information and reports and meeting the eligibility criteria described in this section will be determined an approved organization. The program year will run from July 1 through June 30 of the following year.

F. The commissioner may terminate an approved organization's eligibility based on a finding of program abuse involving illegal activities or fraudulent reporting on contributions.

G. Any neighborhood organization that disagrees with the disposition of its application, or its termination as an approved organization, may appeal to the commissioner in writing for a reconsideration. Such requests must be made within 30 days of the denial or termination. The commissioner will act on the request and render a final decision within 30 days of the request for reconsideration.

22VAC40-41-30. Allocation of tax credits.

A. The available tax credits will be allocated among all approved organizations as follows:

1. Any amounts legislatively set aside for special purposes will be allocated for these purposes.
2. At least 10% of the available amount of tax credits each year shall be allocated to approved organizations not receiving allocations in the preceding year; however, if the amount of requested tax credits for approved organizations is less than 10% of the available amount of tax credits, the unallocated portion of such 10% shall be allocated to other approved organizations.

3. Approved organizations that received a tax credit allocation within the last four years will be given an allocation based on the average amount of tax credits actually used in prior years. The allocation process may include a determination of the reasonableness of requests, caps, and percentage reductions in order to stay within the total available funding.

B. During the program year, approved organizations that have used at least 75% of their allocation may request additional allocations of tax credits within the limits described in this section. Requests will be evaluated on reasonableness, and tax credits will be reallocated on a first-come basis as they become available. An exception may be made for organizations that have received a written commitment for a donation of real estate.

C. Maximum allocation of tax credits.

1. ~~No organization shall receive an allocation greater than \$500,000.~~ An organization shall receive an allocation of tax credits as specified in § 58.1-439.20 C of the Code of Virginia.

2. For the process of determining the maximum allocation for an organization whose purpose is to support and benefit another approved organization, the combined allocation will not exceed the ~~\$500,000~~ maximum cap set by § 58.1-439.20 of the Code of Virginia.

D. Organizations may release all or a portion of their unused tax credit allocation to be reallocated in accordance with subsection B of this section.

22VAC40-41-50. Donations by businesses and health care professionals.

A. As provided by § 58.1-439.21 of the Code of Virginia, a business firm shall be eligible for a tax credit based on the value of the money, property, professional services, and contracting services donated by the business firm during its taxable year to an approved organization.

B. No tax credit shall be granted to any business firm for donations to an approved organization providing job training or education for individuals employed by the business firm.

C. Health care professionals that meet certain conditions, as specified in § 58.1-439.22 C of the Code of Virginia, shall be eligible for a tax credit based on the time spent in providing health care services for such clinic.

D. Mediators that meet certain conditions, as specified in § 58.1-439.22 C of the Code of Virginia, shall be eligible for a tax credit based on the time spent in providing mediation services at the direction of an approved organization regardless of where the service is delivered.

~~D.~~ E. All donations must be made directly to the approved organization without any conditions or expectation of monetary benefit. Discounted donations and bargain sales are not allowable donations for the Neighborhood Assistance Program.

~~E.~~ F. Granting of tax credits shall conform to the minimum and maximum amounts prescribed in § 58.1-439.21 of the Code of Virginia.

~~F.~~ G. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

~~G.~~ H. The approved organization and donor shall complete a certification on a form prescribed by the Department of Social Services. The certification shall identify the date, type, and value of the donation.

~~H.~~ I. All certifications must be submitted to the Department of Social Services within four years of the date of donation.

~~I.~~ J. Upon receipt and approval of the certification, the commissioner shall issue a tax credit certificate to the business.

22VAC40-41-55. Donations by individuals.

A. As provided in § 58.1-439.24 of the Code of Virginia, an individual shall be eligible for a tax credit for a cash donation or a donation of marketable securities to an approved organization.

B. Such donations are subject to the minimum and maximum amounts and other provisions set forth in § 58.1-439.24 of the Code of Virginia.

C. The approved organization and the individual shall complete a certification on a form prescribed by the Department of Social Services. The certification shall identify the date and amount of the donation.

D. All certifications must be submitted to the Department of Social Services within four years of the date of donation.

E. Upon receipt and approval of the certification, the commissioner shall issue a tax credit certificate to the individual.

VA.R. Doc. No. R13-3296; Filed August 20, 2012, 9:21 a.m.

Final Regulation

REGISTRAR'S NOTICE: Enactments 75 through 78 of Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Child Day Care Council effective July 1, 2012, and transferred regulations of the council to the State Board of Social Services. The following action transfers the Child Day Care Council regulation numbered 22VAC15-30 to the State Board of Social Services and rennumbers the regulation as 22VAC40-185.

This regulatory action is excluded from the Administrative Process Act in accordance with § 2.2- 4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Regulations

Title of Regulation: **22VAC40-185. Standards for Licensed Child Day Centers (adding 22VAC40-185-10 through 22VAC40-185-610).**

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Effective Date: November 1, 2012.

Agency Contact: Karin Clark, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Room 1507, Richmond, VA 23219, telephone (804) 726-7017, FAX (804) 726-7015, TTY (800) 828-1120, or email karin.clark@dss.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Child Day Care Council on a recommendation of Governor McDonnell's Commission on Government Reform and Restructuring. This regulatory action amends the Child Day Care Council regulations by renumbering the regulations and placing them under the State Board of Social Services in the Virginia Administrative Code.

CHAPTER ~~30~~ 185

STANDARDS FOR LICENSED CHILD DAY CENTERS

22VAC15-30-10. 22VAC40-185-10. Definitions.

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

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Age groups":

1. "Infant" means children from birth to 16 months.
2. "Toddler" means children from 16 months up to two years.
3. "Preschool" means children from two years up to the age of eligibility to attend public school, five years by September 30.
4. "School age" means children eligible to attend public school, age five or older by September 30 of that same year. Four- or five-year-old children included in a group of school age children may be considered school age during the summer months if the children will be entering kindergarten that year.

"Attendance" means the actual presence of an enrolled child.

"Balanced mixed-age grouping" means a program using a curriculum designed to meet the needs and interests of children in the group and is planned for children who enter the program at three through five years of age. The enrollment in the balance mixed-age grouping comprises a relatively even allocation of children in each of three ages

(three to six years) and is designed for children and staff to remain together with turnover planned only for the replacement of exiting students with children of ages that maintain the class balance.

"Body fluids" means urine, feces, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Camp" means a child day camp that is a child day center for school age children that operates during the summer vacation months only. Four-year-old children who will be five by September 30 of the same year may be included in a camp for school age children.

"Center" means a child day center.

"Child" means any individual under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

Exemptions (§ 63.2-1715 of the Code of Virginia):

1. A child day center that has obtained an exemption pursuant to § 63.2-1716 of the Code of Virginia;
2. A program where, by written policy given to and signed by a parent or guardian, children are free to enter and leave the premises without permission or supervision regardless of (i) such program's location or the number of days per week of its operation; (ii) the provision of transportation services, including drop-off and pick-up times; or (iii) the scheduling of breaks for snacks, homework, or other activities. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure;
3. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a three-month period;
4. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed 1-1/2 hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation;
5. A program that operates no more than a total of 20 program days in the course of a calendar year provided that programs serving children under age six operate no more

than two consecutive weeks without a break of at least a week;

6. Instructional programs offered by public and private schools that satisfy compulsory attendance laws or the Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.), and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language;

7. Education and care programs provided by public schools that are not exempt pursuant to subdivision 6 of this definition shall be regulated by the State Board of Education using regulations that incorporate, but may exceed, the regulations for child day centers licensed by the commissioner;

8. Early intervention programs for children eligible under Part C of the Individuals with Disabilities Education Act, as amended (20 USC § 1400 et seq.), wherein no child attends for more than a total of six hours per week;

9. Practice or competition in organized competitive sports leagues;

10. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child-minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services;

11. Child-minding services which are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, except for part-time employees working less than two hours per day; (ii) can be contacted and can resume responsibility for the child's supervision within 30 minutes; and (iii) is receiving or providing services or participating in activities offered by the establishment;

12. A certified preschool or nursery school program operated by a private school that is accredited by a statewide accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission that complies with the provisions of § 63.2-1717 of the Code of Virginia;

13. A program of recreational activities offered by local governments, staffed by local government employees, and

attended by school-age children. Such programs shall be subject to safety and supervisory standards established by local governments; or

14. By policy, a child day center that is required to be programmatically licensed by another state agency for that service.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

Note: This does not include programs such as drop-in playgrounds or clubs for children when there is no service arrangement with the child's parent.

"Children with special needs" means children with developmental disabilities, mental retardation, emotional disturbance, sensory or motor impairment, or significant chronic illness who require special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way to reduce the amount of filth through the use of water with soap or detergent or the use of an abrasive cleaner on inanimate surfaces.

"Commissioner" means the Commissioner of the Virginia Department of Social Services.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner.

"Evening care" means care provided after 7 p.m. but not through the night.

"Good character and reputation" means knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships which are characterized by honesty, fairness, and truthfulness and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of children. Relatives by blood or marriage and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group of children" means the children assigned to a staff member or team of staff members.

Regulations

"High school program completion or the equivalent" means an individual has earned a high school diploma or General Education Development (G.E.D.) certificate, or has completed a program of home instruction equivalent to high school completion.

"Independent contractor" means an entity that enters into an agreement to provide specialized services or staff for a specified period of time.

"Individual service, education or treatment plan" means a plan identifying the child's strengths, needs, general functioning and plan for providing services to the child. The service plan includes specific goals and objectives for services, accommodations and intervention strategies. The service, education or treatment plan clearly shows documentation and reassessment/evaluation strategies.

"Intervention strategies" means a plan for staff action that outlines methods, techniques, cues, programs, or tasks that enable the child to successfully complete a specific goal.

"Licensee" means any individual, partnership, association, public agency, or corporation to whom the license is issued.

"Minor injury" means a wound or other specific damage to the body such as, but not limited to, abrasions, splinters, bites that do not break the skin, and bruises.

"Overnight care" means care provided after 7 p.m. and through the night.

"Parent" means the biological or adoptive parent or parents or legal guardian or guardians of a child enrolled in or in the process of being admitted to a center.

"Physician" means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Physician's designee" means a physician, licensed nurse practitioner, licensed physician assistant, licensed nurse (R.N. or L.P.N.), or health assistant acting under the supervision of a physician.

"Primitive camp" means a camp where places of abode, water supply system, or permanent toilet and cooking facilities are not usually provided.

"Programmatic experience" means time spent working directly with children in a group that is located away from the child's home. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period. Experience settings may include but not be limited to a child day program, family day home, child day center, boys and girls club, field placement, elementary school, or a faith-based organization.

"Resilient surfacing" means:

1. For indoor and outdoor use underneath and surrounding equipment, impact absorbing surfacing materials that comply with minimum safety standards when tested in accordance with the procedures described in the American Society for Testing and Materials' standard F1292-99 as

shown in Figures 2 (Compressed Loose Fill Synthetic Materials Depth Chart) and 3 (Use Zones for Equipment) on pages 6-7 of the National Program for Playground Safety's "Selecting Playground Surface Materials: Selecting the Best Surface Material for Your Playground," February 2004.

2. Hard surfaces such as asphalt, concrete, dirt, grass or flooring covered by carpet or gym mats do not qualify as resilient surfacing.

"Sanitized" means treated in such a way to remove bacteria and viruses from inanimate surfaces through using a disinfectant solution (i.e., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat). The surface of item is sprayed or dipped into the disinfectant solution and allowed to air dry after use of the disinfectant solution.

"Serious injury" means a wound or other specific damage to the body such as, but not limited to, unconsciousness; broken bones; dislocation; deep cut requiring stitches; concussion; foreign object lodged in eye, nose, ear, or other body orifice.

"Shelter-in-place" means the facility or building in which a child day center is located.

"Short-term program" means a child day center that operates less than 12 weeks a year.

"Special needs child day program" means a program exclusively serving children with special needs.

"Specialty camps" means those centers that have an educational or recreational focus on one subject such as dance, drama, music, or sports.

"Sponsor" means an individual, partnership, association, public agency, corporation or other legal entity in whom the ultimate authority and legal responsibility is vested for the administration and operation of a center subject to licensure.

"Staff" means administrative, activity, and service personnel including the licensee when the licensee is an individual who works in the center, and any persons counted in the staff-to-children ratios or any persons working with a child without sight and sound supervision of a staff member.

"Staff positions" are defined as follows:

1. "Aide" means the individual designated to be responsible for helping the program leader in supervising children and in implementing the activities and services for children. Aides may also be referred to as assistant teachers or child care assistants.
2. "Program leader" means the individual designated to be responsible for the direct supervision of children and for implementation of the activities and services for a group of children. Program leaders may also be referred to as child care supervisors or teachers.
3. "Program director" means the primary, on-site director or coordinator designated to be responsible for developing and implementing the activities and services offered to

children, including the supervision, orientation, training, and scheduling of staff who work directly with children, whether or not personally performing these functions.

4. "Administrator" means a manager or coordinator designated to be in charge of the total operation and management of one or more centers. The administrator may be responsible for supervising the program director or, if appropriately qualified, may concurrently serve as the program director. The administrator may perform staff orientation or training or program development functions if the administrator meets the qualifications of ~~22VAC15-30-230~~ 22VAC40-185-190 and a written delegation of responsibility specifies the duties of the program director.

"Therapeutic child day program" means a specialized program, including but not limited to therapeutic recreation programs, exclusively serving children with special needs when an individual service, education or treatment plan is developed and implemented with the goal of improving the functional abilities of the children in care.

"Universal precautions" means an approach to infection control. According to the concept of universal precautions, all human blood and certain human body fluids are treated as if known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV), and other bloodborne pathogens.

"Volunteer" means a person who works at the center and:

1. Is not paid;
2. Is not counted in the staff-to-children ratios; and
3. Is in sight and sound supervision of a staff member when working with a child.

Any unpaid person not meeting this definition shall be considered "staff" and shall meet staff requirements.

~~22VAC15-30-20.~~ 22VAC40-185-20. Legal base.

A. Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2 of the Code of Virginia describes the responsibility of the Department of Social Services for the regulation of residential and day programs for children, including child day centers.

B. Section 63.2-1734 of the Code of Virginia requires the ~~Child Day Care Council~~ State Board of Social Services to prescribe standards for certain activities, services, and facilities for child day centers.

C. Nothing in this chapter shall be construed to contradict or to negate any provisions of the Code of Virginia which may apply to child day centers.

~~22VAC15-30-30.~~ 22VAC40-185-30. Purpose and applicability.

A. The purpose of these standards is to protect children under the age of 13 who are separated from their parents during a part of the day by:

1. Ensuring that the activities, services, and facilities of centers are conducive to the well-being of children; and

2. Reducing risks in the environment.

B. The standards in this chapter apply to child day centers as defined in ~~22VAC15-30-40~~ 22VAC40-185-10 serving children under the age of 13.

~~22VAC15-30-50.~~ 22VAC40-185-40. Operational responsibilities.

A. Applications for licensure shall conform with Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2 of the Code of Virginia and the regulation entitled General Procedures and Information for Licensure, 22VAC40-80.

B. Pursuant to §§ 63.2-1719 and 63.2-1721 and the regulation entitled Background Checks for Child Welfare Agencies, 22VAC40-191, the applicant and any agent at the time of application who is or will be involved in the day-to-day operations of the center or who is or will be alone with, in control of, or supervising one or more of the children, shall be of good character and reputation and shall not be guilty of an offense. Offenses are barrier crimes, conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction, and a founded complaint of child abuse or neglect.

C. The sponsor shall afford the commissioner or his agents the right at all reasonable times to inspect facilities and to interview his agents, employees, and any child or other person within his custody or control, provided that no private interviews may be conducted with any child without prior notice to the parent of such child.

D. The license shall be posted in a place conspicuous to the public (§ 63.2-1701 of the Code of Virginia).

E. The operational responsibilities of the licensee shall include, but not be limited to, ensuring that the center's activities, services, and facilities are maintained in compliance with these standards, the center's own policies and procedures that are required by these standards, and the terms of the current license issued by the department.

F. Every center shall ensure that any advertising is not misleading or deceptive as required by § 63.2-1713 of the Code of Virginia.

G. The center shall meet the proof of child identity and age requirements as stated in § 63.2-1809 of the Code of Virginia.

H. The sponsor shall maintain public liability insurance for bodily injury for each center site with a minimum limit of at least \$500,000 each occurrence and with a minimum limit of \$500,000 aggregate.

1. A public sponsor may have equivalent self-insurance that is in compliance with the Code of Virginia.

2. Evidence of insurance coverage shall be made available to the department's representative upon request.

I. The center shall develop written procedures for injury prevention.

Regulations

J. Injury prevention procedures shall be updated at least annually based on documentation of injuries and a review of the activities and services.

K. The center shall develop written playground safety procedures which shall include:

1. Provision for active supervision by staff to include positioning of staff in strategic locations, scanning play activities, and circulating among children; and
2. Method of maintaining resilient surface.

L. Hospital-operated centers may temporarily exceed their licensed capacity during a natural disaster or other catastrophe or emergency situation and shall develop a written plan for emergency operations, for submission to and approval by the Department of Social Services.

M. When children 13 years or older are enrolled in the program and receive supervision in the licensed program, they shall be counted in the number of children receiving care and the center shall comply with the standards for these children.

~~22VAC15-30-70.~~ 22VAC40-185-50. **General recordkeeping; reports.**

A. Staff and children's records shall be treated confidentially. Exception: Children's records shall be made available to parents on request, unless otherwise ordered by the court.

B. Records and reports on children and staff required by this chapter shall be maintained and made accessible for two years after termination of services or separation from employment unless specified otherwise.

C. Records may be kept at a central location except as stated otherwise in these standards.

~~22VAC15-30-80.~~ 22VAC40-185-60. **Children's records.**

A. Each center shall maintain and keep at the center a separate record for each child enrolled which shall contain the following information:

1. Name, nickname (if any), sex, and birth date of the child;
2. Name, home address, and home phone number of each parent who has custody;
3. When applicable, work phone number and place of employment of each parent who has custody;
4. Name and phone number of child's physician;
5. Name, address, and phone number of two designated people to call in an emergency if a parent cannot be reached;
6. Names of persons authorized to pick up the child. Appropriate legal paperwork shall be on file when the custodial parent requests the center not to release the child to the other parent;

7. Allergies and intolerance to food, medication, or any other substances, and actions to take in an emergency situation;

8. Chronic physical problems and pertinent developmental information and any special accommodations needed;

9. Health information as required by ~~22VAC15-30-150~~ 22VAC40-185-130 through ~~22VAC15-30-170~~ 22VAC40-185-150;

Exception: When a center is located on the same premises where a child attends school and the child's record has a statement verifying the school's possession of the health record, the center is not required to maintain duplicates of the school's health record for that child provided the school's records are accessible during the center's hours of operation.

10. Written agreements between the parent and the center as required by ~~22VAC15-30-110~~ 22VAC40-185-90;

11. Documentation of child updates and confirmation of up-to-date information in the child's record as required by ~~22VAC15-30-490 E 3~~ 22VAC40-185-420 E 3;

12. Any blanket permission slips and opt out requests;

13. Previous child day care and schools attended by the child;

14. Name of any additional programs or schools that the child is concurrently attending and the grade or class level;

15. Documentation of viewing proof of the child's identity and age; and

16. First and last dates of attendance.

B. The proof of identity, if reproduced or retained by the child day program or both, shall be destroyed upon the conclusion of the requisite period of retention. The procedures for the disposal, physical destruction or other disposition of the proof of identity containing social security numbers shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or indecipherable by any means.

~~22VAC15-30-90.~~ 22VAC40-185-70. **Staff records.**

A. The following staff records shall be kept for each staff person:

1. Name, address, verification of age requirement, job title, and date of employment or volunteering; and name, address and telephone number of a person to be notified in an emergency which shall be kept at the center.

2. For staff hired after March 1, 1996, documentation that two or more references as to character and reputation as well as competency were checked before employment or volunteering. If a reference check is taken over the phone, documentation shall include:

- a. Dates of contact;
- b. Names of persons contacted;

- c. The firms contacted;
 - d. Results; and
 - e. Signature of person making call.
3. Background checks as required by the regulation entitled Background Checks for Licensed Child Day Centers (22VAC15-51).
 4. Written information to demonstrate that the individual possesses the education, orientation training, staff development, certification, and experience required by the job position.
 5. First aid, cardiopulmonary resuscitation and other certifications as required by the responsibilities held by the staff member.
 6. Health information as required by ~~22VAC15-30-180~~ 22VAC40-185-160 and ~~22VAC15-30-190~~ 22VAC40-185-170.
 7. Information, to be kept at the center, about any health problems which may interfere with fulfilling the job responsibilities.
 8. Date of separation from employment.

B. Exception: Background check records for independent contractors must be kept in accordance with 22VAC15-51-70 of the background check regulation.

~~22VAC15-30-100.~~ 22VAC40-185-80. **Attendance records; reports.**

A. The center shall keep a written record of children in attendance each day.

B. Reports shall be filed and maintained as follows:

1. The center shall inform the commissioner's representative as soon as practicable but not to exceed one working day of the circumstances surrounding the following incidents:
 - a. Death of a child while under the center's supervision; and
 - b. Missing child when local authorities have been contacted for help.
2. Any suspected incident of child abuse shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

~~22VAC15-30-110.~~ 22VAC40-185-90. **Parental agreements.**

A written agreement between the parent and the center shall be in each child's record by the first day of the child's attendance. The agreement shall be signed by the parent and include:

1. An authorization for emergency medical care should an emergency occur when the parent cannot be located immediately unless the parent states in writing an objection to the provision of such care on religious or other grounds;
2. A statement that the center will notify the parent when the child becomes ill and that the parent will arrange to

have the child picked up as soon as possible if so requested by the center; and

3. A statement that the parent will inform the center within 24 hours or the next business day after his child or any member of the immediate household has developed any reportable communicable disease, as defined by the State Board of Health, except for life threatening diseases which must be reported immediately.

~~22VAC15-30-120.~~ 22VAC40-185-100. **Enrollment procedures of therapeutic child day programs and special needs child day programs.**

Before the child's first day of attendance, there shall be personal communication between the director, or his designee, and the parent to determine:

1. The child's level of general functioning as related to physical, affective/emotional, cognitive and social skills required for participation; and
2. Any special medical procedures needed.

~~22VAC15-30-130.~~ 22VAC40-185-110. **Individual assessment for therapeutic child day programs.**

A. An individual assessment completed within six months before the child's attendance or 30 days after the first day of attendance shall be maintained for each child.

B. An individual assessment shall be reviewed and updated for each child no less than once every 12 months.

~~22VAC15-30-140.~~ 22VAC40-185-120. **Individual service, education or treatment plan for therapeutic child day programs.**

A. An individual service, education or treatment plan:

1. Shall be developed for each child by the director or his designee and primary staff responsible for plan implementation;
2. Shall be implemented within 60 days after the first day of the child's attendance.

B. The child's individual service, education or treatment plan shall be developed, reviewed, and revised every three months and rewritten annually by the director or his designee and primary staff responsible for plan implementation. This shall be done in partnership with the parent, residential care provider or advocate.

C. A copy of the initial plan and subsequent or amended service, education or treatment plans shall be maintained in the child's record and a copy given to the child's parent.

~~22VAC15-30-150.~~ 22VAC40-185-130. **Immunizations for children.**

A. The center shall obtain documentation that each child has received the immunizations required by the State Board of Health before the child can attend the center.

Exemptions (subsection C of § 22.1-271.2 of the Code of Virginia and 12VAC5-110-110 of the Regulations for the Immunizations of School Children): Documentation of

Regulations

immunizations is not required for any child whose (i) parent submits an affidavit to the center, on the form entitled "Certification of Religious Exemption," stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices, or (ii) physician or a local health department states on a MCH 213B or MCH 213C, or other Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health.

B. The center shall obtain documentation of additional immunizations once every six months for children under the age of two years.

C. The center shall obtain documentation of additional immunizations once between each child's fourth and sixth birthdays.

~~22VAC15-30-160.~~ 22VAC40-185-140. Physical examinations for children.

A. Each child shall have a physical examination by or under the direction of a physician:

1. Before the child's attendance; or
2. Within one month after attendance.

B. If the child has had a physical examination prior to attendance, it shall be within the time period prescribed below:

1. Within two months prior to attendance for children six months of age and younger;
2. Within three months prior to attendance for children aged seven months through 18 months;
3. Within six months prior to attendance for children aged 19 months through 24 months; and
4. Within 12 months prior to attendance for children two years of age through five years of age.

C. Exceptions:

1. Children transferring from a facility licensed by the Virginia Department of Social Services, certified by a local department of public welfare or social services, registered as a small family day home by the Virginia Department of Social Services or by a contract agency of the Virginia Department of Social Services, or approved by a licensed family day system:

- a. If the initial report or a copy of the initial report of immunizations is available to the admitting facility, no additional examination is required.
 - b. If the initial report or a copy of the initial report is not available, a report of physical examination and immunization is required in accordance with ~~22VAC15-30-150~~ 22VAC40-185-130 and this section.
2. Pursuant to subsection D of § 22.1-270 of the Code of Virginia, physical examinations are not required for any child whose parent objects on religious grounds. The parent must submit a signed statement noting that the

parent objects on religious grounds and certifying that to the best of the parent's knowledge the child is in good health and free from communicable or contagious disease.

~~22VAC15-30-170.~~ 22VAC40-185-150. Form and content of immunizations and physical examination reports for children.

A. The current form required by the Virginia Department of Health or a physician's form shall be used to report immunizations received and the results of the required physical examination.

B. Each report shall include the date of the physical examination and dates immunizations were received and shall be signed by a physician, his designee, or an official of a local health department.

~~22VAC15-30-180.~~ 22VAC40-185-160. Tuberculosis screening for staff and independent contractors.

A. Each staff member and individual from an independent contractor shall submit documentation of a negative tuberculosis screening.

Documentation of the screening shall be submitted no later than 21 days after employment or volunteering and shall have been completed within 12 months prior to or 21 days after employment or volunteering.

B. Acceptable forms of documentation of tuberculosis screening are:

1. A clearance statement signed by a physician, the physician's designee or an official of the local health department. This statement shall include language that the individual does not have any current symptoms of active tuberculosis, does not have either a risk factor for acquiring tuberculosis infection or a risk factor for progression to active tuberculosis disease as defined by the local health department, or has been treated for these conditions in the past, and is currently free of tuberculosis in a communicable form. Individuals who have a risk factor for progression to active tuberculosis disease as defined by the Virginia Department of Health shall submit documentation as stated in subdivision 2 or 3 of this subsection;

2. The results of a negative tuberculin skin test (TST). The documentation shall include the date the test was given and results of the test and be signed by a physician, physician's designee or an official of the local health department.

3. The results of a chest x-ray negative for active tuberculosis disease. The documentation shall include the date of the test and location where the examination was performed.

C. At least every two years from the date of the initial screening or testing, or more frequently if recommended by a licensed physician or the local health department, staff members and individuals from independent contractors shall obtain and submit the results of a follow-up tuberculosis screening as stated in subsection B of this section.

D. Any staff member or individual from an independent contractor who develops symptoms compatible with active tuberculosis disease, regardless of the date of the last tuberculosis screening or assessment, shall obtain and submit within 14 days a determination of noncontagiousness by a physician or local health department.

1. Until such determination is made, that staff member may not be permitted to work at the center.
2. Any staff member or individual from an independent contractor who comes in contact with a known active case of tuberculosis or who tests positive on a tuberculin skin test, regardless of the date of the last tuberculosis screening or assessment, shall submit within 30 days a statement indicating that all needed follow-up for the incident has been completed and that the individual is free of tuberculosis in a communicable form. This statement shall be signed by a physician, physician's designee or an official of the local health department.

22VAC15-30-190. 22VAC40-185-170. Physical and mental health of staff and volunteers.

A. When there is evidence that the safety of children may be jeopardized by contact with a staff member or volunteer because of the physical health or mental health of such staff member or volunteer, the licensee shall, at a minimum, prohibit the employee or volunteer from engaging in contact with the children or participation in the food service program until a physician or a clinical psychologist skilled in the diagnosis and treatment of mental illness confirms that any risk has been eliminated or can be reduced to an acceptable level by reasonable accommodations.

B. The requirement of subsection A of this section should not be construed as a mandatory precondition to any other employment action that an employer may otherwise take.

22VAC15-30-200. 22VAC40-185-180. General qualifications.

A. No staff shall be guilty of an offense, as defined in § 63.2-1719 of the Code of Virginia.

B. Staff shall be:

1. Of good character and reputation;
2. Capable of carrying out assigned responsibilities;
3. Capable of accepting training and supervision; and
4. Capable of communicating effectively both orally and in writing as applicable to the job responsibility.

C. Staff who work directly with children shall be capable of communicating with emergency personnel.

D. Staff who drive a vehicle transporting children shall disclose any moving traffic violation that occurred five years prior to or during employment or assignment as a driver.

E. For therapeutic child day programs and special needs child day programs, staff who work with children shall have knowledge of the groups being served and skills specific to the special needs of the children in care including, but not

limited to, functional abilities, accommodations, assessment techniques, behavior management, and medical and health concerns.

22VAC15-30-230. 22VAC40-185-190. Program director qualifications.

A. Program directors shall be at least 21 years of age and shall meet one of the following:

1. A graduate degree in a child-related field such as, but not limited to, elementary education, nursing, or recreation from a college or university and six months of programmatic experience;
2. An endorsement or bachelor's degree in a child-related field such as, but not limited to, elementary education, nursing, or recreation from a college or university and one year of programmatic experience;
3. Forty-eight semester hours or 72 quarter hours of college credit from a college or university of which 12 semester hours or 18 quarter hours are in child-related subjects and one year of programmatic experience;
4. Two years of programmatic experience with one year in a staff supervisory capacity and at least one of the following education backgrounds:
 - a. A one-year early childhood certificate from a college or university that consists of at least 30 semester hours;
 - b. A child development credential that requires:
 - (1) High school program completion or the equivalent;
 - (2) 480 hours working with children in a group which could include a supervised practicum; and
 - (3) Determination of competency in promoting children's development, providing a safe and healthy environment, managing the classroom environment and/or childhood program, and promoting positive and productive relationships with parents/guardians; and
 - (4) At least 120 clock hours of child-related training taught by an individual or by an organization with expertise in early childhood teacher preparation provided that the training facilitator:
 - (a) Documents the student's mastery and competence;
 - (b) Observes the student's application of competence in a classroom setting;
 - (c) Has a combination of at least six years of education (leading to a degree or credential in a child-related field) or programmatic experience; and
 - (d) Has at least 12 semester hours or 180 clock hours in a child-related field, a child development credential or equivalent, and two years of programmatic experience with one year in a staff supervisory capacity; or
 - c. A certification of qualification from an internationally or nationally recognized Montessori organization; or

Regulations

5. Three years of programmatic experience including one year in a staff supervisory capacity and fulfilled a high school program completion or the equivalent.

a. Such programmatic experience shall be obtained in a child day center that offers a staff training program that includes: written goals and objectives; assessment of the employee's participation in the training; and the subject areas of first aid, human growth and development, health and safety issues and behavioral management of children.

b. Such employees shall complete 120 hours of training during this three-year period and provide documentation of completing the training.

c. Effective June 1, 2008, program directors shall meet a qualification as stated in subdivisions 1 through 4 of this subsection.

6. Exception (a): Program directors hired before June 1, 2005, who do not meet the qualifications may continue to be program directors as long as the program director: (i) obtains each year three semester hours or six quarter hours of college credit related to children until meeting a qualification option or (ii) is enrolled in and regularly works toward a child development credential as specified in subdivision 4 b of this subsection, which credential must be awarded by June 1, 2009.

Exception (b): Program directors hired or promoted on or after June 1, 2005, until June 1, 2006, who do not meet the qualifications may continue to be program directors as long as the program director: (i) obtains each year six semester hours or nine quarter hours of college credit related to children until meeting a qualification option or (ii) is enrolled in and regularly works toward a child development credential as specified in subdivision 4 b of this subsection, which credential must be awarded no later than June 1, 2007.

B. Program directors without management experience shall have one college course in a business-related field, 10 clock hours of management training, or one child care management course that satisfactorily covers the management functions of:

1. Planning;
2. Budgeting;
3. Staffing; and
4. Monitoring.

*Note: Management experience is defined as at least six months of on-the-job training in an administrative position that requires supervising, orienting, training, and scheduling staff.

C. For program directors of therapeutic child day programs and special needs child day programs, education and programmatic experience shall be in the group care of children with special needs.

D. Notwithstanding subsection A of this section, a person between 19 and 21 years of age may serve as a program

director at a short-term program serving only school age children if the program director has daily supervisory contact by a person at least 21 years of age who meets one of the program director qualification options.

~~22VAC15-30-250.~~ 22VAC40-185-200. **Program directors and back-up for program directors.**

A. The center shall have a qualified program director or a qualified back-up program director who meets one of the director qualifications who shall regularly be on site at least 50% of the center's hours of operation.

B. For centers offering multiple shifts, a qualified program director or qualified back-up director shall regularly be on site at least 50% of the day shift and at least two hours during the evening shift and two hours during the night shift.

C. For centers employing one or more program leaders who are qualified under subsection C of ~~22VAC15-30-260~~ 22VAC40-185-210 but not under subsection A of that section, the qualified program director or qualified back-up program director shall be on site at least 75% of the center's hours of operation.

~~22VAC15-30-260.~~ 22VAC40-185-210. **Program leader qualifications.**

A. Program leaders shall be at least 18 years of age, have fulfilled a high school program completion or the equivalent, and meet one of the following:

1. Have one of the program director qualifications in ~~22VAC15-30-230~~ 22VAC40-185-190;

2. Have an endorsement or bachelor's degree in a child-related field such as, but not limited to, elementary education, nursing, or recreation, from a college or university;

3. Have three months of programmatic experience and at least one of the following education backgrounds:

a. A one year early childhood certificate from a college or university that consists of at least 30 semester hours;

b. A child development credential by an organization listed in § 63.2-1738 of the Code of Virginia;

c. A teaching diploma from an internationally or nationally recognized Montessori organization; or

4. Have six months of supervised programmatic experience.

a. Within six months before being promoted or beginning work or one month after being promoted or beginning work, a minimum of 12 hours of training shall be received related to the care of children, including but not limited to:

(1) Child development;

(2) Playground safety;

(3) Health and safety issues; and

(4) Preventing and reporting child abuse and neglect.

b. Such training may take place on site while not supervising children. Such training hours shall increase according to the following:

- (1) Program leaders hired or promoted after June 1, 2006 16 hours
- (2) Program leaders hired or promoted after June 1, 2007 20 hours
- (3) Program leaders hired or promoted after June 1, 2008 24 hours

B. For program leaders of therapeutic child day programs and special needs child day programs, at least three months of programmatic experience shall be in the group care of children with special needs.

C. Notwithstanding the experience requirements in subsection A of this section, program leaders at short-term programs may have only one season of programmatic experience, provided that this experience shall include at least 200 hours, of which up to 24 hours can be formal training, working directly with children in a group.

22VAC15-30-280, 22VAC40-185-220. Aides.

Aides shall be at least 16 years of age.

22VAC15-30-290, 22VAC40-185-230. Independent contractors; volunteers.

A. Individuals from independent contractors shall not be counted in the staff-to-children ratios unless they meet the qualifications for the applicable position.

B. Individuals from independent contractors who do not meet staff qualifications shall, when in the presence of children, be within sight and sound supervision of a staff member.

C. Volunteers who work with children shall be at least 13 years of age.

22VAC15-30-310, 22VAC40-185-240. Staff training and development.

A. Staff shall receive the following training by the end of their first day of assuming job responsibilities:

- 1. Job responsibilities and to whom they report;
- 2. The policies and procedures listed in subsection B of this section and ~~22VAC15-30-490 A~~ 22VAC40-185-420 A that relate to the staff member's responsibilities;
- 3. The center's playground safety procedures unless the staff member will have no responsibility for playground activities or equipment;
- 4. Recognizing child abuse and neglect and the legal requirements for reporting suspected child abuse as required by § 63.2-1509 of the Code of Virginia;
- 5. Confidential treatment of personal information about children in care and their families; and
- 6. The standards in this chapter that relate to the staff member's responsibilities.

B. By the end of the first day of supervising children, staff shall be provided in writing with the information listed in ~~22VAC15-30-490 A~~ 22VAC40-185-420 A and the following:

- 1. Procedures for supervising a child who may arrive after scheduled classes or activities including field trips have begun;
- 2. Procedures to confirm absence of a child when the child is scheduled to arrive from another program or from an agency responsible for transporting the child to the center;
- 3. Procedures for identifying where attending children are at all times, including procedures to ensure that all children are accounted for before leaving a field trip site and upon return to the center;
- 4. Procedures for action in case of lost or missing children, ill or injured children, medical emergencies and general emergencies;
- 5. Policy for any administration of medication; and
- 6. Procedures for response to natural and man-made disasters.

C. Program directors and staff who work directly with children shall annually attend 10 hours of staff development activities that shall be related to child safety and development and the function of the center. Such training hours shall increase according to the following:

- 1. June 1, 2006 - 12 hours
- 2. June 1, 2007 - 14 hours
- 3. June 1, 2008 - 16 hours
- 4. Staff development activities to meet this subsection may include up to two hours of training in first aid or cardiopulmonary resuscitation. Staff development activities to meet this subsection may not include rescue breathing and first responder as required by ~~22VAC15-30-590~~ 22VAC40-185-530 and training in medication administration and daily health observation of children as required by subsection D of this section.
- 5. Exception (a): Staff who drive a vehicle transporting children and do not work with a group of children at the center do not need to meet the annual training requirement.

Exception (b): Parents who participate in cooperative preschool centers shall complete four hours of orientation training per year.

Exception (c): Staff who are employed at a short-term program shall obtain 10 hours of staff training per year.

D. 1. To safely perform medication administration practices listed in ~~22VAC15-30-580~~ 22VAC40-185-510, whenever the center has agreed to administer prescribed medications, the administration shall be performed by a staff member or independent contractor who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; or administration shall be performed by a staff

Regulations

member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

a. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

b. Staff required to have the training shall be retrained at three-year intervals.

2. The decision to administer medicines at a facility may be limited by center policy to:

a. Prescribed medications;

b. Over-the-counter or nonprescription medications; or

c. No medications except those required for emergencies or by law.

3. To safely perform medication administration practices listed in ~~22VAC15-30-580~~ 22VAC40-185-510, whenever the center has agreed to administer over-the-counter medications other than topical skin gel, cream, or ointment, the administration must be performed by a staff member or independent contractor who has satisfactorily completed a training course developed or approved by the Department of Social Services in consultation with the Department of Health and the Board of Nursing and taught by an R.N., L.P.N., physician, or pharmacist; or performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

a. The course, which shall include competency guidelines, shall reflect currently accepted safe medication administration practices, including instruction and practice in topics such as, but not limited to, reading and following manufacturer's instructions; observing relevant laws, policies and regulations; and demonstrating knowledge of safe practices for medication storage and disposal, recording and reporting responsibilities, and side effects and emergency recognition and response.

b. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

c. Staff required to have the training shall be retrained at three-year intervals.

4. Any child for whom emergency medications (such as but not limited to albuterol, glucagon, and epipen) have been prescribed shall always be in the care of a staff member or independent contractor who meets the requirements in subdivision 1 of this subsection.

5. There shall always be at least one staff member on duty who has obtained within the last three years instruction in performing the daily health observation of children.

6. Daily health observation training shall include:

a. Components of daily health check for children;

b. Inclusion and exclusion of the child from the class when the child is exhibiting physical symptoms that indicate possible illness;

c. Descriptions of how diseases are spread and the procedures or methods for reducing the spread of disease;

d. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and

e. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's (OSHA) Bloodborne Pathogens regulation.

E. Before assuming job responsibilities, staff who work with children in therapeutic child day programs and special needs child day programs shall receive training in:

1. Universal precautions procedures;

2. Activity adaptations;

3. Medication administration;

4. Disabilities precautions and health issues; and

5. Appropriate intervention strategies.

F. For therapeutic child day programs and special needs child day programs, staff who work directly with children shall annually attend 24 hours of staff development activities. At least eight hours of this training shall be on topics related to the care of children with special needs.

22VAC15-30-320, 22VAC40-185-250, Approval from other agencies; requirements prior to initial licensure.

A. Before issuance of the first license and before use of newly constructed, renovated, remodeled, or altered buildings or sections of buildings, written documentation of the following shall be provided by the center to the licensing representative:

1. Approval by the authority having jurisdiction that each building meets building and fire codes or that a plan of correction has been approved; and

Exception: Any building which is currently approved for school occupancy and which houses a public or private school during the school year shall be considered to have met the requirements of subdivision 1 of this subsection when housing a center only serving children two and a half years of age or older.

2. Approval from the local health department, or approval of a plan of correction, for meeting requirements for:

a. Water supply;

b. Sewage disposal system; and

c. Food service, if applicable.

B. For buildings built before 1978, the following shall be submitted before the initial license is issued:

1. A written statement from a person licensed in Virginia as an asbestos inspector and management planner as required by § 63.2-1811 of the Code of Virginia and the requirements of the Asbestos Hazard Emergency Response Act (15 USC § 2641 et seq.); and

2. A written statement that the response actions to abate any risk to human health have been or will be initiated in accordance with a specific schedule and plan as recommended by the asbestos management planner in accordance with § 63.2-1811 of the Code of Virginia.

C. A notice regarding the presence and location of asbestos containing materials and advising that the asbestos inspection report and management plan are available for review shall be posted.

Exception: The provisions of subsections B and C of this section do not apply to centers located in buildings required to be inspected according to Article 5 (§ 2.2-1162 et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia.

D. Before the first license is issued, camps shall notify the responsible fire department and the responsible emergency medical service of the camp location and hours of operation.

22VAC15-30-330. 22VAC40-185-260. Approval from other agencies; requirements subsequent to initial licensure.

A. The center shall provide to the licensing representative an annual fire inspection report from the appropriate fire official having jurisdiction.

Exception: If a center is located in a building currently housing a public or private school, the school's annual fire inspection report shall be accepted.

B. After the first license, annual approval from the health department shall be provided, or approvals of a plan of correction, for meeting requirements for:

1. Water supply;
2. Sewage disposal system; and
3. Food service, if applicable.

C. For those buildings where asbestos containing materials are detected and not removed:

1. A signed, written statement that the center is following the recommendations of the management plan shall be submitted to the department before subsequent licenses are issued; and
2. The notice regarding the presence and location of asbestos containing materials and advising that the asbestos inspection report and management plan are available for review shall continue to be posted.
3. Exception: The provisions of this subsection do not apply to child day centers located in buildings required to be inspected according to Article 5 (§ 2.2-1162 et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia.

22VAC15-30-340. 22VAC40-185-270. Building maintenance.

A. Areas and equipment of the center, inside and outside, shall be maintained in a clean, safe and operable condition. Unsafe conditions shall include, but not be limited to, splintered, cracked or otherwise deteriorating wood; chipped or peeling paint; visible cracks, bending or warping, rusting or breakage of any equipment; head entrapment hazards; and protruding nails, bolts or other components that could entangle clothing or snag skin.

B. Heat shall be supplied from a heating system approved in accordance with the Uniform Statewide Building Code (USBC, 13VAC5-62) except for camps. The heating system shall:

1. Be installed to prevent accessibility of children to the system; and
2. Have appropriate barriers to prevent children from being burned, shocked, or injured from heating equipment. In addition, proper supervision shall be available to prevent injury.
3. Exception: In case of emergency, portable heaters may be used in accordance with the manufacturer's instructions.

C. In inside areas occupied by children, the temperature shall be maintained no lower than 68°F.

D. Fans or other cooling systems shall be used when the temperature of inside areas occupied by children exceeds 80°F.

E. Drinking fountains or individual disposable cups with safe drinking water shall be accessible at all times.

F. Equipment shall include, but not be limited to, the following:

1. Outside lighting provided at entrances and exits used by children before sunrise or after sundown; and
2. An in-service, nonpay telephone.

22VAC15-30-350. 22VAC40-185-280. Hazardous substances and other harmful agents.

A. No center shall be located where conditions exist that would be hazardous to the health and safety of children.

B. Hazardous substances such as cleaning materials, insecticides, and pesticides shall be kept in a locked place using a safe locking method that prevents access by children.

1. If a key is used, the key shall not be accessible to the children.
2. Exception: Cleaning supplies to clean and sanitize the diapering area or toilet chairs do not need to be kept locked during diapering or toilet training time as long as they are inaccessible to children.

C. Pesticides or insecticides shall not be stored in areas used by children or in areas used for food preparation or storage.

Regulations

D. Cleaning and sanitizing materials shall not be located above food, food equipment, utensils or single-service articles and shall be stored in areas physically separate from food.

E. Cleaning materials (e.g., detergents, sanitizers and polishes) and insecticides/pesticides shall be stored in areas physically separate from each other.

F. Hazardous substances shall be stored in the original container unless this container is of such a large size that its use would be impractical.

G. If hazardous substances are not kept in original containers, the substitute containers shall clearly indicate their contents and shall not resemble food or beverage containers.

H. Cosmetics, medications, or other harmful agents shall not be stored in areas, purses or pockets that are accessible to children.

I. Hazardous art and craft materials shall not be used with children.

J. Smoking shall be prohibited in the interior of a center that is not used for residential purposes.

K. In residential areas of the center and outside the center, smoking shall be prohibited in the presence of children.

~~22VAC15-30-360.~~ ~~22VAC40-185-290.~~ General physical plant requirements for centers serving children of preschool age or younger.

In areas used by children of preschool age or younger, the following shall apply:

1. Guardrails and handrails shall be provided in accordance with the USBC (13VAC5-62) in effect at time of first occupancy or construction.
2. Fans, when used, shall be out of reach of children and cords shall be secured so as not to create a tripping hazard.
3. Electrical outlets shall have protective covers that are of a size that cannot be swallowed by children.

~~22VAC15-30-370.~~ ~~22VAC40-185-300.~~ General physical plant requirements for centers serving school age children.

A. Any building which is currently approved for school occupancy and which houses a school during the school year shall be considered to have met the building requirements in this regulation when housing a center only serving school age children.

B. Portable camping equipment for heating or cooking that is not required to be approved by the building official shall bear the label of a nationally recognized inspection agency and be used in accordance with the manufacturer's specifications, except for charcoal and wood burning cooking equipment.

C. No cooking or heating shall occur in tents except as provided by the USBC (13VAC5-62).

~~22VAC15-30-380.~~ ~~22VAC40-185-310.~~ Areas.

A. Indoor space shall be measured inside wall-to-wall excluding spaces not routinely used by children as referenced in subdivisions 1 and 2 of this subsection:

1. Areas not routinely used for children's activities shall not be calculated as available space.
2. Space not calculated shall include, but not be limited to, offices, hallways, restrooms, kitchens, storage rooms or closets.

B. There shall be 25 square feet of indoor space available per child until subdivisions 1 and 2 of this subsection take effect.

1. Effective June 1, 2008, applicants must have 35 square feet of indoor wall-to-wall space per child.
2. Current licensees and subsequent licensees at currently licensed facilities may continue to provide 25 square feet per child.
3. New additions shall have 35 square feet of indoor wall-to-wall space per child effective June 1, 2008.

C. Space in areas used by infants shall be calculated separately from space for older children. There shall be a minimum of 25 square feet of space per infant excluding space occupied by cribs and changing tables or a minimum of 35 square feet of available space per infant including space occupied by cribs and changing tables.

D. Camps for school age children are not required to meet this space requirement. However, when weather prevents outdoor activities, the required indoor space per child shall be provided either at the program site or at a predesignated, approved location off site.

E. When children are on the outdoor play area, at least 75 square feet of space per child shall be provided at any one time.

F. Centers licensed for the care of infants and toddlers shall provide a separate playground area for these children that has at least 25 square feet of unpaved surface per infant/toddler on the outdoor area at any one time. This space may be counted as part of the 75 square feet required in subsection B of this section.

G. A separate space shall be designated for children who are ill or injured.

~~22VAC15-30-390.~~ ~~22VAC40-185-320.~~ Restroom areas and furnishings.

A. Centers shall be provided with at least two toilets and two sinks.

B. Each restroom area provided for children shall:

1. Be within a contained area, readily available and within the building used by the children (Exception: Restrooms used by school age children at camps are not required to be located within the building);
2. Have toilets that are flushable;

3. Have sinks located near the toilets and that are supplied with running warm water that does not exceed 120°F (Exception: Camps are exempt from the requirement that running water be warm); and

4. Be equipped with soap, toilet paper, and disposable towels or an air dryer within reach of children.

C. For restrooms available to males, urinals shall not be substituted for more than one-half the required number of toilets.

D. An adult size toilet with privacy shall be provided for staff use. Staff toilets may be counted in the number of required toilets for children only if children are allowed unrestricted access to them.

Exception: Primitive camps are not required to have a toilet with privacy for staff.

E. Centers shall be provided with at least one toilet and one sink per 20 preschool children and at least one standard size toilet and one sink per 30 school age children. When sharing restroom areas with other programs, the children in those programs shall be included in the toilet and sink ratio calculations. The toilet and sink ratio appropriate to the younger age group shall apply.

F. When child size toilets, urinals, and low sinks are not available in restrooms used by children of preschool age and younger, one or more platforms or sets of steps shall be provided.

G. School age children of the opposite sex shall not use the same restroom at the same time.

H. A restroom used for school age children that contains more than one toilet shall have at least one toilet enclosed.

I. Restrooms used by school age children at primitive camps are not required to have:

1. Sinks, if adequate water, supplies, and equipment for hand washing are available; and
2. Flushable toilets, if the number of sanitary privies or portable toilets constructed and operated in accordance with the applicable law and regulations of the Virginia Department of Health meets the toilet ratio stated in subsection E of this section. No privy or outdoor toilet shall be located within 75 feet of other buildings or camp activities.

~~22VAC15-30-410, 22VAC40-185-330.~~ Play areas.

A. Playgrounds shall be located and designed to protect children from hazards.

B. Where playground equipment is provided, resilient surfacing shall comply with minimum safety standards when tested in accordance with the procedures described in the American Society for Testing and Materials standard F1292-99 as shown in Figures 2 (Compressed Loose Fill Synthetic Materials Depth Chart) and 3 (Use Zones for Equipment) on pages 6-7 of the National Program for Playground Safety's "Selecting Playground Surface Materials: Selecting the Best

Surface Material for Your Playground," February 2004, and shall be under equipment with moving parts or climbing apparatus to create a fall zone free of hazardous obstacles. Fall zones are defined as the area underneath and surrounding equipment that requires a resilient surface. A fall zone shall encompass sufficient area to include the child's trajectory in the event of a fall while the equipment is in use. Falls zones shall not include barriers for resilient surfacing. Where steps are used for accessibility, resilient surfacing is not required.

C. Ground supports shall be covered with materials that protect children from injury.

D. Swing seats shall be constructed with flexible material.

1. Exceptions: Nonflexible molded swing seats may be used only in a separate infant or toddler play area.
2. Swings made specifically for a child with a special need shall be permitted in any area as long as a staff member is positioned to see and protect other children who might walk into the path of the swing.

E. Sandboxes with bottoms which prevent drainage shall be covered when not in use.

F. A shady area shall be provided on playgrounds during the months of June, July, and August.

EXCEPTION: The requirements of this section shall not prohibit child day programs providing care for school-age children at a location that is currently approved by the Department of Education or recognized as a private school by the State Board of Education for school occupancy and that houses a public or private school during the school year from permitting school-age children to use outdoor play equipment and areas approved for use by students of the school during school hours.

Part V
Staffing and Supervision

~~22VAC15-30-430.~~ 22VAC40-185-340. Supervision of children.

A. When staff are supervising children, they shall always ensure their care, protection, and guidance.

B. During the center's hours of operation, one adult on the premises shall be in charge of the administration of the center. This person shall be either the administrator or an adult appointed by the licensee or designated by the administrator.

C. During the stated hours of operation, there always shall be on the premises and on field trips when one or more children are present one staff member who meets the qualifications of a program leader or program director and an immediately available staff member, volunteer or other employee who is at least 16 years of age, with direct means for communication between the two of them. The volunteer or other employee shall have received instruction in how to contact appropriate authorities if there is an emergency.

D. In each grouping of children at least one staff member who meets the qualifications of a program leader or program

Regulations

director shall be regularly present. Such a program leader shall supervise no more than two aides.

E. Exception: A program leader is not required in each grouping of children during the first and last hour of operation when a center operates more than six hours per day and during the designated rest period if the following are met: (i) there is a staff member in the group who is over 18 years of age and has at least three months of programmatic experience at the center; (ii) there is an additional staff person on site who meets program leader qualifications, is not counted in the staff-to-children ratios and is immediately available to help if needed; and (iii) there is a direct means for communicating between these two staff members.

F. Children under 10 years of age always shall be within actual sight and sound supervision of staff, except that staff need only be able to hear a child who is using the restroom provided that:

1. There is a system to assure that individuals who are not staff members or persons allowed to pick up a child in care do not enter the restroom area while in use by children; and
2. Staff check on a child who has not returned from the restroom after five minutes. Depending on the location and layout of the restroom, staff may need to provide intermittent sight supervision of the children in the restroom area during this five-minute period to assure the safety of children and to provide assistance to children as needed.

G. Children 10 years of age and older shall be within actual sight and sound supervision of staff except when the following requirements are met:

1. Staff can hear or see the children (video equipment, intercom systems, or other technological devices shall not substitute for staff being able to directly see or hear children);
2. Staff are nearby so they can provide immediate intervention if needed;
3. There is a system to ensure that staff know where the children are and what they are doing;
4. There is a system to ensure that individuals who are not staff members or persons allowed to pick up children in care do not enter the areas where children are not under sight supervision; and
5. Staff provide sight and sound supervision of the children at variable and unpredictable intervals not to exceed 15 minutes.

H. When the outdoor activity area is not adjacent to the center, there shall be at least two staff members on the outdoor activity area whenever one or more children are present.

I. Staff shall greet each child upon arrival at the center and oversee each child's departure from the center.

J. Staff shall not allow a child to leave the center unsupervised.

~~22VAC15-30-440.~~ **22VAC40-185-350.** **Staff-to-children ratio requirements.**

A. Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children.

B. A child volunteer 13 years of age or older not enrolled in the program shall not be counted as a child in the staff-to-children ratio requirements.

C. When children are regularly in ongoing mixed age groups, the staff-to-children ratio applicable to the youngest child in the group shall apply to the entire group.

D. During the designated rest period and the designated sleep period of evening and overnight care programs, the ratio of staff to children may be double the number of children to each staff required by subdivisions E 2 through 4 and 7 of this section if:

1. A staff person is within sight and sound of the resting/sleeping children;
2. Staff counted in the overall rest period ratio are within the building and available to ensure safe evacuation in an emergency; and
3. An additional person is present at the center to help, if necessary.

E. The following ratios of staff to children are required wherever children are in care:

1. For children from birth to the age of 16 months: one staff member for every four children;
2. For children 16 months old to two years: one staff member for every five children;
3. For two-year-old children: one staff member for every eight children effective June 1, 2006;
4. For children from three years to the age of eligibility to attend public school, five years by September 30: one staff member for every 10 children effective June 1, 2006;
5. For children from age of eligibility to attend public school through eight years, one staff member for every 18 children; and
6. For children from nine years through 12 years, one staff member for every 20 children effective June 1, 2006.
7. Notwithstanding subdivisions 4 and 5 of this subsection and subsection C of this section, the ratio for balanced mixed-age groupings of children shall be one staff member for every 14 children, provided:

a. If the program leader has an extended absence, there shall be sufficient substitute staff to meet a ratio of one staff member for every 12 children.

b. The center shall have readily accessible and in close classroom proximity auxiliary persons sufficient to maintain a 1:10 adult-to-child ratio for all three-year-olds

who are included in balanced mixed-age groups to be available in the event of emergencies.

c. The program leader has received training in classroom management of balanced mixed-age groupings of at least eight hours.

F. With a parent's written permission and a written assessment by the program director and program leader, a center may choose to assign a child to a different age group if such age group is more appropriate for the child's developmental level and the staff-to-children ratio shall be for the established age group.

1. If such developmental placement is made for a child with a special need, a written assessment by a recognized agency or professional shall be required at least annually. These assignments are intended to be a permanent new group and staff members for the child.

2. A center may temporarily reassign a child from his regular group and staff members for reasons of administrative necessity but not casually or repeatedly disrupt a child's schedule and attachment to his staff members and group.

G. For therapeutic child day programs, in each grouping of children of preschool age or younger, the following ratios of staff to children are required according to the special needs of the children in care:

1. For children with severe and profound disabilities, multiple special needs, serious medical need, or serious emotional disturbance: one staff member to three children.

2. For children diagnosed as trainable mentally retarded (TMR), or with physical and sensory disabilities, or with autism: one staff member to four children.

3. For children diagnosed as educable mentally retarded (EMR) or developmentally delayed or diagnosed with attention deficit/hyperactivity disorder (AD/HD): one staff member to five children.

4. For children diagnosed with specific learning disabilities: one staff member to six children.

5. When children with varied special needs are regularly in ongoing groups, the staff-to-children ratio applicable to the child with the most significant special need in the group shall apply to the entire group.

6. Note: Whenever ~~22VAC15-30-440-E~~ 22VAC40-185-350 E requires more staff than ~~22VAC15-30-440-G~~ 22VAC40-185-350 G because of the children's ages, ~~22VAC15-30-440-E~~ 22VAC40-185-350 E shall take precedence over ~~22VAC15-30-440-G~~ 22VAC40-185-350 G.

H. For therapeutic child day programs, in each grouping of school age children, the following ratios of staff to children are required according to the special needs of the children in care:

1. For children with severe and profound disabilities, autism, multiple special needs, serious medical need, or serious emotional disturbance: one staff member to four children.

2. For children diagnosed as trainable mentally retarded (TMR), or with physical and sensory disabilities; attention deficit/hyperactivity disorder (AD/HD), or other health impairments: one staff member to five children.

3. For children diagnosed as educable mentally retarded (EMR), or developmentally delayed: one staff member to six children.

4. For children diagnosed with specific learning disabilities, or speech or language impairments: one staff member to eight children.

5. When children with varied special needs are regularly in ongoing groups, the staff-to-children ratio applicable to the child with the most significant special need in the group shall apply to the entire group.

Part VI
Programs

~~22VAC15-30-451~~, 22VAC40-185-360. **Daily activities.**

A. The variety of daily activities for all age groups shall be age and stage appropriate and provide opportunities for teacher-directed, self-directed, and self-chosen tasks and activities; a balance of active and quiet activities; individual and group activities; and curiosity and exploration.

Exception: Specialty camps do not need to provide opportunities for self-chosen tasks and curiosity and exploration.

B. For a child who cannot move without help, staff shall offer to change the places and position of the child at least every 30 minutes or more frequently depending on the child's individual needs.

C. Children shall be allowed to sleep or rest as individually needed.

D. For a child in a therapeutic child day program, daily activities shall be in accordance with the program's individual plan for such child.

~~22VAC15-30-461~~, 22VAC40-185-370. **Daily activities for infants.**

There shall be a flexible daily schedule for infants based on their individual needs. During the day, infants shall be provided with:

1. Sleep as needed.

a. When an infant is placed in his crib, he shall be placed on his back (supine).

b. When an infant is able to easily turn over from the back (supine) to the belly (prone) position and he is placed in his crib, he shall still be put on his back (supine) but allowed to adopt whatever position he

Regulations

prefers. This applies unless otherwise directed by the infant's physician in writing.

c. If the side position is used, caregivers shall bring the dependent arm forward to lessen the likelihood of the infant rolling into a belly (prone) position.

d. Resting or sleeping infants shall be individually checked every 15-20 minutes.

e. An infant who falls asleep in a play space specified in subdivision 5 a of this section may remain in that space if comfortable and safe.

2. Food as specified in ~~22VAC15-30-620~~ 22VAC40-185-560 and ~~22VAC15-30-630~~ 22VAC40-185-570.

3. Outdoor time if weather and air quality allow based upon the Air Quality Color Code Chart as provided by the Department of Environmental Quality.

4. Comfort as needed.

5. Play spaces.

a. Play spaces may include, but are not limited to, cribs, infant seats, play yards, exercise chairs or saucers (but not walkers), infant swings, high chairs, and floor space.

b. The variety of play spaces shall cumulatively offer:

(1) Room for extensive movement (rolling, crawling, or walking) and exploration;

(2) A diversity of sensory and perceptual experiences; and

(3) Equipment and toys that support large and small motor development.

c. Staff shall provide frequent opportunities for infants to creep, crawl, toddle and walk.

d. Infants shall be protected from older children.

e. Staff shall provide awake infants not playing on the floor or ground a change in play space at least every 30 minutes or more often as determined by the individual infant's needs.

f. Staff shall change the position of an awake infant playing on the floor or ground and the selection of toys available to the infant every 30 minutes or more often as determined by the individual infant's needs.

g. Infants, who cannot turn themselves over and are awake, shall be placed on their stomachs a total of 30 minutes each day to facilitate upper body strength and to address misshapen head concerns.

6. Stimulation and language development activities, including but not limited to staff reading, talking to, showing pictures to, naming objects for, playing with and engaging in positive interactions (such as smiling, cuddling, and making eye contact) with infants.

~~22VAC15-30-471~~, 22VAC40-185-380. Daily activities for toddlers and preschoolers.

A. There shall be a posted daily schedule that allows for flexibility as children's needs require. The daily schedule need not apply on days occupied a majority of the time by a field trip or other special event. The daily schedule shall include opportunities for:

1. Outdoor activity, weather and air quality allowing, for at least:

a. Fifteen minutes per day or session if the center operates up to three hours per day or session;

b. Thirty minutes per day or session if the center operates between three and five hours per day or session; or

c. One hour per day or session if the center operates more than five hours per day or session.

2. Sleep or rest.

a. Centers operating five or more hours per day shall have a designated rest period for at least one hour but no more than two hours.

(1) Cribs, cots, beds, or mats shall be used.

(2) After the first 30 minutes, children not sleeping may engage in quiet activities.

b. A child who falls asleep in a place other than his designated sleeping location may remain in that space if comfortable and safe.

c. Sleeping toddlers shall be individually checked every 30 minutes.

3. Meals and snacks as specified in ~~22VAC15-30-620~~ 22VAC40-185-560 and ~~22VAC15-30-630~~ 22VAC40-185-570.

4. Small and large motor activities, language and communication experiences, sensory experiences, art or music activities, and play acting or social living.

B. Staff shall encourage language development by having conversations with children that give them time to initiate and respond, by labeling and describing objects and events, having storytelling time and by expanding the children's vocabulary.

~~22VAC15-30-481~~, 22VAC40-185-390. Daily activities for school age children.

A. Before or after school, the center shall provide an opportunity for children to do homework or projects or hobbies in a suitable area. In the afternoon, there shall be an opportunity for large motor activities at least 25% of the time.

B. On nonschool days, the daily activity shall include opportunities for large motor activities at least 25% of the time; small motor activities; projects, hobbies, or homework in a suitable place; art or music activities; outdoor activity in accordance with ~~22VAC15-30-471 A 1~~ 22VAC40-185-380 A 1 and food as specified in ~~22VAC15-30-620~~ 22VAC40-185-560 and ~~22VAC15-30-630~~ 22VAC40-185-570.

Exception: Specialty camps are not required to meet the requirements of this subsection.

~~22VAC15-30-484.~~ 22VAC40-185-400. **Behavioral guidance.**

A. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, staff shall interact with the child and one another to provide needed help, comfort, support and:

1. Respect personal privacy;
2. Respect differences in cultural, ethnic, and family backgrounds;
3. Encourage decision-making abilities;
4. Promote ways of getting along;
5. Encourage independence and self-direction; and
6. Use consistency in applying expectations.

B. Behavioral guidance shall be constructive in nature, age and stage appropriate, and shall be intended to redirect children to appropriate behavior and resolve conflicts.

~~22VAC15-30-487.~~ 22VAC40-185-410. **Forbidden actions.**

The following actions or threats thereof are forbidden:

1. Physical punishment, striking a child, roughly handling or shaking a child, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or exercise as punishment;
2. Enclosure in a small confined space or any space that the child cannot freely exit himself; however, this does not apply to the use of equipment such as cribs, play yards, high chairs, and safety gates when used with children preschool age or younger for their intended purpose;
3. Punishment by another child;
4. Separation from the group so that the child is away from the hearing and vision of a staff member;
5. Withholding or forcing of food or rest;
6. Verbal remarks which are demeaning to the child;
7. Punishment for toileting accidents; and
8. Punishment by applying unpleasant or harmful substances.

~~22VAC15-30-490.~~ 22VAC40-185-420. **Parental involvement.**

A. Before the child's first day of attending, parents shall be provided in writing the following:

1. The center's philosophy and any religious affiliation;
2. Operating information, including the hours and days of operation and holidays or other times closed, and the phone number where a message can be given to staff;
3. The center's transportation policy;
4. The center's policies for the arrival and departure of children, including procedures for verifying that only persons authorized by the parent are allowed to pick up the

child, picking up children after closing, when a child is not picked up for emergency situations including but not limited to inclement weather or natural disasters;

5. The center's policy regarding any medication or medical procedures that will be given;
6. The center's policy regarding application of:
 - a. Sunscreen;
 - b. Diaper ointment or cream; and
 - c. Insect repellent.
7. Description of established lines of authority for staff;
8. Policy for reporting suspected child abuse as required by § 63.2-1509 of the Code of Virginia;
9. The custodial parent's right to be admitted to the center as required by § 63.2-1813 of the Code of Virginia;
10. Policy for communicating an emergency situation with parents;
11. The appropriate general daily schedule for the age of the enrolling child;
12. Food policies;
13. Discipline policies including acceptable and unacceptable discipline measures; and
14. Termination policies.

B. Staff shall promptly inform parents when persistent behavioral problems are identified; such notification shall include any disciplinary steps taken in response.

C. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the child day program (§ 63.2-1813 of the Code of Virginia).

D. The center shall provide opportunities for parental involvement in center activities.

E. Communication.

1. For each infant, the center shall post a daily record which can be easily accessed by both the parent and the staff working with the child. The record shall contain the following information:
 - a. The amount of time the infant slept;
 - b. The amount of food consumed and the time;
 - c. A description and time of bowel movements;
 - d. Developmental milestones; and
 - e. For infants, who are awake and cannot turn over by themselves, the amount of time spent on their stomachs.
2. If asked by parents, staff shall provide feedback about daily activities, physical well-being, and developmental milestones.
3. Parents shall be provided at least semiannually in writing information on their child's development, behavior, adjustment, and needs.

Regulations

- a. Staff shall provide at least semiannual scheduled opportunities for parents to provide feedback on their children and the center's program.
- b. Staff shall request at least annually parent confirmation that the required information in the child's record is up to date.
- c. Such sharing of information shall be documented.
- d. Short-term programs (as defined in ~~22VAC15-30-10~~ 22VAC40-185-10) are exempt from this requirement.

4. Parents shall be informed of reasons for termination of services.

~~22VAC15-30-500.~~ 22VAC40-185-430. **Equipment and materials.**

A. Furnishings, equipment, and materials shall be of an appropriate size for the child using it.

B. Materials and equipment available shall be age and stage appropriate for the children and shall include an adequate supply as appropriate for each age group of arts and crafts materials, texture materials, construction materials, music and sound materials, books, social living equipment, and manipulative equipment.

C. Play equipment used by children shall meet the following requirements:

- 1. Openings above the ground or floor which allow a 3-1/2 inch by 6-1/4 inch rectangle to fit through shall also allow a nine-inch circle to fit through;
- 2. S-hooks where provided may not be open more than the thickness of a penny; and
- 3. Have no protrusions, sharp points, shearing points, or pinch points.

D. The unenclosed climbing portion of slides and climbing equipment used by toddlers and preschool children shall not be more than seven feet high and must be located over resilient surfacing where outdoors, and shall not be more than five feet high where indoors.

E. Centers may not install after June 1, 2005, any slide or climbing equipment to be used by preschoolers or toddlers when the climbing portion of the equipment is more than six feet in height.

F. The climbing portions of indoor slides and climbing equipment over 18 inches shall not be over bare flooring.

G. The climbing portions of indoor slides and climbing equipment 36 inches or more shall be located over a resilient surface.

H. Trampolines may not be used.

EXCEPTION: The requirements of subsections A through H of this section shall not prohibit child day programs providing care for school-age children at a location that is currently approved by the Department of Education or recognized as a private school by the State Board of Education for school occupancy and that houses a public or private school during

the school year from permitting school-age children to use outdoor play equipment and areas approved for use by students of the school during school hours.

I. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

J. Disposable products shall be used once and discarded.

K. Provision shall be made for an individual place for each child's personal belongings.

L. Infant walkers shall not be used.

M. Play yards where used shall:

- 1. Meet the Juvenile Products Manufacturers Association (JPMA) and the American Society for Testing and Materials (ASTM) requirements and shall retain the manufacturer's label documenting product compliance with current safety standards at the time they were manufactured;
- 2. Not be used after recalled;
- 3. Not use any pillows or filled comforters;
- 4. Not be used for the designated sleeping areas;
- 5. Not be occupied by more than one child; and
- 6. Be sanitized each day of use or more often as needed.

N. Upon being informed that a product has been recalled, center staff shall remove the item from the center.

O. Where portable water coolers are used, they shall be of cleanable construction, maintained in a cleaned condition, kept securely closed and so designed that water may be withdrawn from the container only by water tap or faucet.

P. Drinking water which is transported to camp sites shall be in closed containers.

Q. Therapeutic child day programs and special needs child day programs serving children who use wheelchairs shall provide cushioned vinyl-covered floor mats for use when activities require children to be out of their wheelchairs.

~~22VAC15-30-510.~~ 22VAC40-185-440. **Cribs, cots, rest mats, and beds.**

A. Cribs, cots, rest mats or beds shall be provided for children during the designated rest period and not be occupied by more than one child at a time.

B. Cribs, cots, rest mats, and beds shall be identified for use by a specific child.

C. Double decker cribs, cots, or beds, or other sleeping equipment when stacked shall not be permitted.

D. Occupied cribs, cots, rest mats, and beds shall be at least 2-1/2 feet from any heat producing appliance.

E. There shall be at least 12 inches of space between occupied cots, beds, and rest mats.

Exception: Twelve inches of space are not required where cots, beds, or rest mats are located adjacent to a wall or a divider as long as one side is open at all times to allow for passage.

F. If rest mats are used, they shall have cushioning and be sanitized on all sides weekly or before use by another child.

G. Cribs shall be used for children under 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot or mat.

H. Cribs shall meet the following requirements:

1. They shall meet the Consumer Product Safety Commission Standards at the time they were manufactured;
2. They shall not have been recalled;
3. There shall be no more than six centimeters or 2-3/8 inches of space between slats;
4. There shall be no more than one inch between the mattress and the crib; and
5. End panel cut-outs in cribs shall be of a size not to cause head entrapment.

I. Cribs shall be placed where objects outside the crib such as cords from blinds or curtains are not within reach of infants or toddlers.

J. There shall be at least:

1. Twelve inches of space between the sides and ends of occupied cribs except where they touch the wall; and
2. Thirty inches of space between service sides of occupied cribs and other furniture where that space is the walkway for staff to gain access to any occupied crib.

K. Crib sides shall be up and the fastenings secured when a child is in the crib, except when a staff member is giving the child immediate attention.

L. Pillows and filled comforters shall not be used by children under two years of age.

M. Use of crib bumper pads shall be prohibited.

N. Toys or objects hung over an infant in a crib and crib gyms that are strung across the crib may not be used for infants over five months of age or infants who are able to push up on their hands and knees.

22VAC15-30-520, 22VAC40-185-450, Linens.

A. Cribs, cots, mats and beds used by children other than infants during the designated rest period or during evening and overnight care shall have linens consisting of a top cover and a bottom cover or a one-piece covering which is open on three edges. Cribs when being used by infants shall have a bottom cover.

B. Linens shall be assigned for individual use.

C. Linens shall be clean and washed at least weekly.

1. Crib sheets shall be clean and washed daily.
2. When centers wash the linens, the water shall be above 140°F or the dryer shall heat the linens above 140°F as verified by the manufacturer or a sanitizer shall be used according to the manufacturer's instructions.

D. Pillows when used shall be assigned for individual use and covered with pillow cases.

E. Mattresses when used shall be covered with a waterproof material which can be cleaned and sanitized.

22VAC15-30-540, 22VAC40-185-460, Swimming and wading activities; staff and supervision.

A. The staff-to-children ratios required by ~~22VAC15-30-440 E, G and H~~ 22VAC40-185-350 E, G, and H shall be maintained while children are participating in swimming or wading activities.

1. Notwithstanding the staff-to-children ratios already indicated, at no time shall there be fewer than two staff members supervising the activity.
2. The designated certified lifeguard shall not be counted in the staff-to-children ratios.

B. If a pool, lake, or other swimming area has a water depth of more than two feet, a certified lifeguard holding a current certificate shall be on duty supervising the children participating in swimming or wading activities at all times when one or more children are in the water.

C. The lifeguard certification shall be obtained from an organization such as, but not limited to, the American Red Cross, the YMCA, or the Boy Scouts.

22VAC15-30-550, 22VAC40-185-470, Pools and equipment.

A. When permanent swimming or wading pools are located on the premises of the center, the following shall apply:

1. The manufacturer's specifications for operating the pool shall be followed as well as any local ordinances and any Department of Health requirements for swimming pools;
2. Pools constructed, renovated, or remodeled after April 1, 1986, shall have a statement in writing of their inspection and approval from the local building official when such approval is required;
3. Outdoor swimming pools shall be enclosed by safety fences and gates which are in compliance with the applicable edition of the Virginia USBC (13VAC5-62) and shall be kept locked when the pool is not in use;
4. Entrances to indoor swimming pools shall be locked when the pool is not in use; and
5. A whistle or other audible signaling device, a buoy or a lemon line, a reach pole, and a backboard shall be available at the swimming or wading site.

B. If children are allowed to swim in a lake or other place other than a pool, safe swimming areas shall be clearly marked and there shall be appropriate water safety equipment.

C. Piers, floats, and platforms shall be in good repair and where used for diving, the minimum water depth shall be stated on the deck or planking.

D. If portable wading pools without integral filter systems are used, they shall be emptied after the use of each group of

Regulations

children, rinsed, and filled with clean water, or more frequently as necessary.

E. Children who are not toilet trained may not use portable wading pools.

F. After each day's use, portable wading pools shall be emptied, sanitized, and stored in a position to keep them clean and dry.

~~22VAC15-30-560.~~ 22VAC40-185-480. Swimming and wading; general.

A. The center shall have emergency procedures and written safety rules for swimming or wading or follow the posted rules of public pools that are:

1. Posted in the swimming area when the pool is located on the premises of the center; and
2. Explained to children participating in swimming or wading activities.

B. The center shall maintain (i) written permission from the parent of each child who participates in swimming or wading and (ii) a statement from the parent advising of a child's swimming skills before the child is allowed in water above the child's shoulder height.

C. Staff shall have a system for accounting for all children in the water.

D. Outdoor swimming activities shall occur only during daylight hours unless underwater and deck lighting is provided.

Part VII

Special Care Provisions and Emergencies

~~22VAC15-30-570.~~ 22VAC40-185-490. Preventing the spread of disease.

A. A child shall not be allowed to attend the center for the day if he has:

1. A temperature over 101°F;
2. Recurrent vomiting or diarrhea; or
3. A communicable disease.

B. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the center as soon as possible after the signs or symptoms are noticed; and
2. The child shall remain in the designated quiet area until leaving the center.

C. When children at the center have been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the parents shall be notified within 24 hours or the next business day of the center's having been informed unless forbidden by law, except for life threatening diseases, which must be reported to parents immediately.

D. The center shall consult the local department of health if there is a question about the communicability of a disease.

E. When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

~~22VAC15-30-575.~~ 22VAC40-185-500. Hand washing and toileting procedures.

A. Hand washing.

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.
2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces or urine.
3. Staff shall wash their hands with soap and running water before and after helping a child use the toilet or a diaper change, after the staff member uses the toilet, after any contact with body fluids, and before feeding or helping children with feeding.
4. Exception: If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. Diapering; soiled clothing.

1. The diapering area shall be accessible and within the building used by children.
2. There shall be sight and sound supervision for all children when a child is being diapered.
3. The diapering area shall be provided with the following:
 - a. A sink with running warm water not to exceed 120°F;
 - b. Soap, disposable towels and single use gloves such as surgical or examination gloves;
 - c. A nonabsorbent surface for diapering or changing shall be used. For children younger than three years, this surface shall be a changing table or countertop designated for changing;
 - d. The appropriate disposal container as required by subdivision 5 of this subsection; and
 - e. A leakproof covered receptacle for soiled linens.
4. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately.
5. Disposable diapers shall be used unless the child's skin reacts adversely to disposable diapers.
6. Disposable diapers shall be disposed in a leakproof or plastic-lined storage system that is either foot-operated or used in such a way that neither the staff member's hand nor the soiled diaper touches an exterior surface of the storage system during disposal.
7. When cloth diapers are used, a separate leakproof storage system as specified in this subdivision shall be used.

8. The diapering surface shall be used only for diapering or cleaning children, and it shall be cleaned with soap and at least room temperature water and sanitized after each use. Tables used for children's activities or meals shall not be used for changing diapers.

Exception: Individual disposable barriers may be used between each diaper change. If the changing surface becomes soiled, the surface shall be cleaned and sanitized before another child is diapered.

9. Staff shall ensure the immediate safety of a child during diapering.

C. Toilet training. For every 10 children in the process of being toilet trained, there shall be at least one toilet chair or one child-sized toilet, or at least one adult sized toilet with a platform or steps and adapter seat.

1. The location of these items shall allow for sight and sound supervision of children in the classroom if necessary for the required staff-to-children ratios to be maintained.

2. Toilet chairs shall be emptied promptly and cleaned and sanitized after each use.

~~22VAC15-30-580, 22VAC40-185-510~~, **Medication.**

A. Prescription and nonprescription medication shall be given to a child:

1. According to the center's written medication policies; and

2. Only with written authorization from the parent.

B. Nonprescription medication shall be administered by a staff member or independent contractor who meets the requirements in ~~22VAC15-30-310 D 1 or 22VAC15-30-310 D 3~~ 22VAC40-185-240 D 1 or 3.

C. The center's procedures for administering medication shall:

1. Include any general restrictions of the center.

2. For nonprescription medication, be consistent with the manufacturer's instructions for age, duration and dosage.

3. Include duration of the parent's authorization for medication, provided that it shall expire or be renewed after 10 work days. Long-term prescription drug use and over-the-counter medication may be allowed with written authorization from the child's physician and parent.

4. Include methods to prevent use of outdated medication.

D. The medication authorization shall be available to staff during the entire time it is effective.

E. Medication shall be labeled with the child's name, the name of the medication, the dosage amount, and the time or times to be given.

F. Nonprescription medication shall be in the original container with the direction label attached.

G. The center may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a staff member or an independent contractor who meets the requirements in ~~22VAC15-30-310 D 1~~ 22VAC40-185-240 D 1;

2. The center has obtained written authorization from a parent or guardian;

3. The center administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and

4. The center administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

H. When needed, medication shall be refrigerated.

I. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

J. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and staff's personal medication, shall be kept in a locked place using a safe locking method that prevents access by children.

K. If a key is used, the key shall not be accessible to the children.

L. Centers shall keep a record of medication given children, which shall include the following:

1. Child to whom medication was administered;

2. Amount and type of medication administered to the child;

3. The day and time the medication was administered to the child;

4. Staff member administering the medication;

5. Any adverse reactions; and

6. Any medication error.

M. Staff shall inform parents immediately of any adverse reactions to medication administered and any medication error.

N. When an authorization for medication expires, the parent shall be notified that the medication needs to be picked up within 14 days or the parent must renew the authorization. Medications that are not picked up by the parent within 14 days will be disposed of by the center by either dissolving the medication down the sink or flushing it down the toilet.

~~22VAC15-30-585, 22VAC40-185-520~~, **Over-the-counter skin products.**

A. All nonprescription drugs and over-the-counter skin products shall be used in accordance with the manufacturer's recommendations. Nonprescription drugs and over-the-counter skin products shall not be kept or used beyond the expiration date of the product.

B. If sunscreen is used, the following requirements shall be met:

Regulations

1. Written parent authorization noting any known adverse reactions shall be obtained;
 2. Sunscreen shall be in the original container and labeled with the child's name;
 3. Sunscreen does not need to be kept locked but shall be inaccessible to children under five years of age or those children in a therapeutic child day program or special needs child day program;
 4. Any center-kept sunscreen shall be hypo-allergenic and have a minimum SPF of 15;
 5. Staff members without medication administration training may apply sunscreen, unless it is prescription sunscreen, in which case the storing and application of sunscreen must meet medication-related requirements; and
 6. Children nine years of age and older may administer their own sunscreen if supervised.
- C. If diaper ointment or cream is used, the following requirements shall be met:
1. Written parent authorization noting any known adverse reactions shall be obtained;
 2. These products shall be in the original container and labeled with the child's name;
 3. These products do not need to be kept locked but shall be inaccessible to children;
 4. A record shall be kept that includes the child's name, date of use, frequency of application and any adverse reactions; and
 5. Staff members without medication administration training may apply diaper ointment, unless it is prescription diaper ointment, in which case the storing and application of diaper ointment must meet medication-related requirements.
- D. If insect repellent is used, the following requirements shall be met:
1. Written parent authorization noting any known adverse reactions shall be obtained;
 2. Insect repellent shall be in the original container and labeled with the child's name;
 3. Insect repellent does not need to be kept locked but shall be inaccessible to children;
 4. A record shall be kept that includes the child's name, date of use, frequency of application and any adverse reactions;
 5. Manufacturer's instructions for age, duration and dosage shall be followed; and
 6. Staff members without medication administration training may apply insect repellent, unless it is prescription insect repellent, in which case the storing and application of insect repellent must meet medication-related requirements.

22VAC15-30-590. 22VAC40-185-530. First aid training, cardiopulmonary resuscitation (CPR) and rescue breathing.

A. There shall be at least one staff member trained in first aid, cardiopulmonary resuscitation, and rescue breathing as appropriate to the age of the children in care who is on the premises during the center's hours of operation and also one person on field trips and wherever children are in care.

1. This person shall be available to children; and
2. This person shall have current certification by the American Red Cross, American Heart Association, National Safety Council, or other designated program approved by the Department of Social Services.

B. Primitive camps shall have a staff member on the premises during the hours of operation who has at least current certification in first responder training.

22VAC15-30-600. 22VAC40-185-540. First aid and emergency supplies.

A. A first aid kit shall be:

1. On each floor of each building used by children;
2. Accessible to outdoor play areas;
3. On field trips; and
4. Wherever children are in care.

B. Each first aid kit shall be easily accessible to staff but not to children.

C. The required first aid kits shall include at a minimum:

1. Scissors;
2. Tweezers;
3. Gauze pads;
4. Adhesive tape;
5. Band-aids, assorted types;
6. An antiseptic cleansing solution /pads;
7. Thermometer;
8. Triangular bandages;
9. Single use gloves such as surgical or examination gloves; and
10. The first aid instructional manual.

D. The following emergency supplies shall be required at the center and be available on field trips:

1. Activated charcoal preparation (to be used only on the direction of a physician or the center's local poison control center); and
2. An ice pack or cooling agent.

E. The following nonmedical emergency supplies shall be required:

1. One working, battery-operated flashlight on each floor of each building that is used by children; and

2. One working, battery-operated radio in each building used by children and any camp location without a building.

~~22VAC15-30-610.~~ 22VAC40-185-550. Procedures for emergencies.

A. The center shall have an emergency preparedness plan that addresses staff responsibility and facility readiness with respect to emergency evacuation and shelter-in-place. The plan, which shall be developed in consultation with local or state authorities, addresses the most likely to occur emergency scenario or scenarios, including but not limited to natural disaster, chemical spills, intruder, and terrorism specific to the locality.

B. The emergency preparedness plan shall contain procedural components for:

1. Sounding of alarms (intruder, shelter-in-place such as for tornado, or chemical hazard);
2. Emergency communication to include:
 - a. Establishment of center emergency officer and back-up officer to include 24-hour contact telephone number for each;
 - b. Notification of local authorities (fire and rescue, law enforcement, emergency medical services, poison control, health department, etc.), parents, and local media; and
 - c. Availability and primary use of communication tools;
3. Evacuation to include:
 - a. Assembly points, head counts, primary and secondary means of egress, and complete evacuation of the buildings;
 - b. Securing of essential documents (sign-in record, parent contact information, etc.) and special healthcare supplies to be carried off-site on immediate notice; and
 - c. Method of communication after the evacuation;
4. Shelter-in-place to include:
 - a. Scenario applicability, inside assembly points, head counts, primary and secondary means of access and egress;
 - b. Securing essential documents (sign-in records, parent contact information, etc.) and special health supplies to be carried into the designated assembly points; and
 - c. Method of communication after the shelter-in-place;
5. Facility containment procedures, (e.g., closing of fire doors or other barriers) and shelter-in-place scenario (e.g., intruders, tornado, or chemical spills);
6. Staff training requirement, drill frequency, and plan review and update; and
7. Other special procedures developed with local authorities.

C. Emergency evacuation and shelter-in-place procedures/maps shall be posted in a location conspicuous to staff and children on each floor of each building.

D. The center shall implement a monthly practice evacuation drill and a minimum of two shelter-in-place practice drills per year for the most likely to occur scenarios.

E. The center shall maintain a record of the dates of the practice drills for one year. For centers offering multiple shifts, the simulated drills shall be divided evenly among the various shifts.

F. A 911 or local dial number for police, fire and emergency medical services and the number of the regional poison control center shall be posted in a visible place at each telephone.

G. Each camp location shall have an emergency preparedness plan and warning system.

H. The center shall prepare a document containing local emergency contact information, potential shelters, hospitals, evacuation routes, etc., that pertain to each site frequently visited or of routes frequently driven by center staff for center business (such as field trips, pick-up/drop off of children to or from schools, etc.). This document must be kept in vehicles that centers use to transport children to and from the center.

I. Parents shall be informed of the center's emergency preparedness plan.

J. Based on local authorities and documented normal ambulance operation, if an ambulance service is not readily accessible within 10 to 15 minutes, other transportation shall be available for use in case of emergency.

K. The center or other appropriate official shall notify the parent immediately if a child is lost, requires emergency medical treatment or sustains a serious injury.

L. The center shall notify the parent by the end of the day of any known minor injuries.

M. The center shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;
2. Name of injured child;
3. Type and circumstance of the injury;
4. Staff present and treatment;
5. Date and time when parents were notified;
6. Any future action to prevent recurrence of the injury;
7. Staff and parent signatures or two staff signatures; and
8. Documentation on how parent was notified.

Regulations

Part VIII Special Services

~~22VAC15-30-620.~~ 22VAC40-185-560. **Nutrition and food services.**

A. Centers shall schedule appropriate times for snacks or meals, or both, based on the hours of operation and time of the day (e.g., a center open only for after school care shall schedule an afternoon snack; a center open from 7 a.m. to 1 p.m. shall schedule a morning snack and midday meal).

B. The center shall ensure that children arriving from a half-day, morning program who have not yet eaten lunch receive a lunch.

C. The center shall schedule snacks or meals so there is a period of at least 1-1/2 hours but no more than three hours between each meal or snack unless there is a scheduled rest or sleep period for children between the meals and snacks.

D. Drinking water or other beverage not containing caffeine shall be offered at regular intervals to nonverbal children.

E. In environments of 80°F or above, attention shall be given to the fluid needs of children at regular intervals. Children in such environments shall be encouraged to drink fluids as outlined in subsection D of this section.

F. When centers choose to provide meals or snacks, the following shall apply:

1. Centers shall follow the most recent, age-appropriate nutritional requirements of a recognized authority such as the Child and Adult Care Food Program of the United States Department of Agriculture (USDA).

2. Children shall be allowed second helpings of food listed in the USDA's child and adult care meal patterns.

3. Centers offering both meals and snacks shall serve a variety of nutritious foods and shall serve at least three sources of vitamin A and at least three sources of vitamin C on various days each week.

4. Children three years of age or younger may not be offered foods that are considered to be potential choking hazards.

5. A menu listing foods to be served for meals and snacks during the current one-week period shall:

- a. Be dated;
- b. Be posted in a location conspicuous to parents or given to parents;
- c. List any substituted food; and
- d. Be kept on file for one week at the center.

6. Powdered milk shall not be used except for cooking.

G. When food is brought from home, the following shall apply:

1. The food container shall be sealed and clearly dated and labeled in a way that identifies the owner;

2. The center shall have extra food or shall have provisions to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and

3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

H. If a catering service is used, it shall be approved by the local health department.

I. Food shall be prepared, stored, and transported in a clean and sanitary manner.

J. Contaminated or spoiled food shall not be served to children.

K. Tables and high chair trays shall be:

1. Sanitized before and after each use for feeding; and
2. Cleaned at least daily.

L. Children shall be encouraged to feed themselves.

M. Staff shall sit with children during meal times.

N. No child shall be allowed to drink or eat while walking around.

~~22VAC15-30-630.~~ 22VAC40-185-570. **Special feeding needs.**

A. High chairs, infant carrier seats, or feeding tables shall be used for children under 12 months who are not held while being fed.

1. Children using infant seats or high chairs shall be supervised during snacks and meals.

2. When a child is placed in an infant seat or high chair, the protective belt shall be fastened securely.

B. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped or used while the child is in his designated sleeping location.

C. The record of each child on formula shall contain:

1. The brand of formula; and
2. The child's feeding schedule.

D. Infants shall be fed on demand or in accordance with parental instructions.

E. Prepared infant formula shall be refrigerated, dated and labeled with the child's name.

F. Heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children.

G. Milk, formula or breast milk shall not be heated or warmed directly in a microwave. Note: Water for warming milk, formula, or breast milk may be heated in a microwave.

H. Prepared baby food not consumed during that feeding by an infant may be used by that same infant later in the same day, provided that the food is not served out of the baby jar and is dated and stored in the refrigerator; otherwise, it shall be discarded or returned to the parent at the end of the day.

Formula or breast milk shall not remain unrefrigerated for more than two hours and may not be reheated.

I. A one-day's emergency supply of disposable bottles, nipples, and commercial formulas appropriate for the children in care shall be maintained at the center.

J. Breastfeeding shall be permitted.

K. Staff shall feed semisolid food with a spoon unless written instructions from a physician or physician's designee state differently.

L. For therapeutic child day programs and special needs child day programs, the consistency of food shall be appropriate to a child's special feeding needs. Necessary and adaptive feeding equipment and feeding techniques shall be used for children with special feeding needs.

~~22VAC15-30-640.~~ 22VAC40-185-580. Transportation and field trips.

A. If the center provides transportation, the center shall be responsible from the time the child boards the vehicle until returned to the parents or person designated by the parent.

B. Any vehicle used by the center for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;
2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes;
4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and
5. If volunteers supply personal vehicles, the center is responsible for ensuring that the requirements of this subsection are met.

C. The center shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed and stated maximum number of passengers in a given vehicle shall not be exceeded;
2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;
3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;
4. At least one staff member or the driver always remains in the vehicle when children are present;
5. The following information is in transportation vehicles:
 - a. Emergency numbers as specified in ~~22VAC15-30-610 F and H~~ 22VAC40-185-550 F and H;
 - b. The center's name, address, and phone number; and
 - c. A list of the names of the children being transported.

D. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

E. Children shall cross streets at corners or crosswalks or other designated safe crossing point if no corner or crosswalk is available.

F. The staff-to-children ratios of ~~22VAC15-30-440 E, G and H~~ 22VAC40-185-350 E, G, and H shall be followed on all field trips. The staff-to-children ratios need not be followed during transportation of school age children to and from the center. One staff member or adult is necessary in addition to the driver when 16 or more preschool or younger children are being transported in the vehicle.

G. The center shall make provisions for providing children on field trips with adequate food and water.

H. If perishable food is taken on field trips, the food shall be stored in insulated containers with ice packs to keep the food cold.

I. Before leaving on a field trip, a schedule of the trip's events and locations shall be posted and visible at the center site.

J. There shall be a communication plan between center staff and staff who are transporting children or on a field trip.

K. Staff shall verify that all children have been removed from the vehicle at the conclusion of any trip.

L. Parental permission for transportation and field trips shall be secured before the scheduled activity.

M. If a blanket permission is used instead of a separate written permission, the following shall apply:

1. Parents shall be notified of the field trip; and
2. Parents shall be given the opportunity to withdraw their children from the field trip.

~~22VAC15-30-650.~~ 22VAC40-185-590. Transportation for nonambulatory children.

A. For therapeutic child day programs and special needs child day programs providing transportation, nonambulatory children shall be transported in a vehicle which is equipped with a ramp or hydraulic lift to allow entry and exit.

B. Wheelchairs shall be equipped with restraining devices and shall be securely fastened to the floor when used to seat children in a vehicle.

C. Arrangements of wheelchairs in a vehicle shall not impede access to exits.

D. For therapeutic child day programs and special needs child day programs, when the center is responsible for providing transportation, the center shall develop a plan based on the needs of the children in care to assure their safe supervision during on-loading, off-loading and transporting.

E. When 16 or more children are being transported, there shall be at least one center aide or adult besides the driver, for each group of 16.

Regulations

F. For therapeutic child day programs and special needs child day programs, if a child has a known seizure disorder or neurological, genetic or physiological disability causing increased medical risk and that child is being transported, one center aide or adult who is not the driver and who is trained in CPR shall be present in the vehicle.

~~22VAC15-30-660.~~ 22VAC40-185-600. Animals and pets.

A. Animals that are kept on the premises of the center shall be vaccinated, if applicable, against diseases which present a hazard to the health or safety of children.

B. Animals which are, or are suspected of being, ill or infested with external lice, fleas and ticks or internal worms shall be removed from contact with children.

C. If a child is bitten by an animal, an attempt shall be made to confine the animal for observation or laboratory analysis for evidence of rabies.

D. The site of the bite shall be washed with soap and water immediately, and the child's physician or local health department shall be contacted as soon as possible for medical advice.

E. The center shall report the animal bite incident to the local health department.

F. Manure shall be removed from barns, stables and corrals at least once a day and stored and disposed of in a manner to prevent the breeding of flies.

~~22VAC15-30-670.~~ 22VAC40-185-610. Evening and overnight care.

A. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours and are not required to sleep in cribs.

Exception: Camps providing evening care on an occasional basis are not required to meet the requirements of this subsection if sleeping bags or cots are used.

B. For overnight care, beds with mattresses or cots with at least two inches of dense padding shall be used by children who are not required to sleep in cribs.

Exception: Camps providing overnight care on an occasional basis are not required to meet the requirements of this subsection if sleeping bags or cots are used.

C. For overnight care which occurs for a child on a weekly or more frequent basis, beds with mattresses shall be used.

D. In addition to ~~22VAC15-30-520~~ 22VAC40-185-450 about linens, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

E. For evening and overnight care, separate sleeping areas shall be provided for children of the opposite sex eight years of age or older.

F. If sleeping bags are used, ~~22VAC15-30-510 A through E~~ 22VAC40-185-440 A through E about rest furnishings shall also apply to the use of sleeping bags.

G. Camps may use bunk beds if children are at least eight years of age.

H. In centers providing overnight care, an operational tub or shower with heated and cold water shall be provided.

Exception: Primitive camps are not required to have a tub or shower.

I. When bath towels are used, they shall be assigned for individual use.

J. Activities for children in evening or overnight care shall include, as time allows, age-appropriate activities as described in ~~22VAC15-30-454~~ 22VAC40-185-360 through ~~22VAC15-30-484~~ 22VAC40-185-390.

K. Quiet activities shall be available immediately before bedtime.

L. For children receiving evening or overnight care, the provider shall offer an evening snack.

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 (~~22VAC15-30~~) (22VAC40-185)

[Initial Application for a License to Operate a Child Day Center, 032-05-512/12 \(rev. 06/05\).](#)

[Renewal Application for a License to Operate a Child Day Center, 032-05-225/11 \(rev. 06/05\).](#)

DOCUMENTS INCORPORATED BY REFERENCE (~~22VAC15-30~~) (22VAC40-185)

F406-02 ASTM Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards, October 2003.

F1292-99 ASTM Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment, August 10, 1999.

"Selecting Playground Surface Materials: Guidelines for Selecting the Best Surface Material for Your Playground," National Program for Playground Safety, University of Northern Iowa, February 2004.

Air Quality Color Code Chart, Virginia Department of Environmental Quality, April 2004.

VA.R. Doc. No. R13-3283; Filed August 20, 2012, 10:04 a.m.

EXECUTIVE ORDER NUMBER 50 (2012)

Promulgation of the 2012 Commonwealth of Virginia Emergency Operations Plan

Importance of the Issue

By virtue of the authority vested in me by § 44-146.17 of the Code of Virginia as Governor and as Director of Emergency Management, I hereby promulgate and issue the Commonwealth of Virginia Emergency Operations Plan ("the Plan") dated August 2012, thereby superseding all previous versions of the Plan. The Plan provides a solid foundation for emergency planning and preparedness, establishes the organizational framework and operational concepts and procedures designed to minimize the loss of life and property, and expedites the restoration of essential services following an emergency or disaster.

The Plan is consistent with the Commonwealth of Virginia Emergency Services and Disaster Law of 2000 (Chapter 3.2, Title 44 of the Code of Virginia, as amended), the National Response Framework adopted January 2008, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, as amended) with its implementing regulations.

The State Coordinator of Emergency Management, on behalf of the Governor, is hereby authorized to activate the Plan, as well as the Commonwealth of Virginia Emergency Operations Center ("Virginia EOC"), in order to direct and coordinate state government emergency operations.

Furthermore, the State Coordinator of Emergency Management is hereby authorized, in coordination with the Office of the Governor, to amend the Plan as necessary in order to achieve Preparedness Goals and Initiatives of the Nation and this Commonwealth and in accordance with the Commonwealth of Virginia Emergency Services and Disaster Law of 2000 (Chapter 3.2, Title 44 of the Code of Virginia, as amended).

Recognizing that the Plan adopted herein is in effect and supersedes previous versions of the Plan, Executive Order 41 (2011) is hereby amended to delete the section entitled, "Commonwealth of Virginia Emergency Operations Plan."

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

Given under my hand and under the Seal of the Commonwealth of Virginia this 20th day of August 2012.

/s/ Robert F. McDonnell
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Agricultural Stewardship Act 2011 Annual Report

The Commissioner of Agriculture and Consumer Services announces the availability of the annual report of the Agricultural Stewardship Act entitled "Virginia Agricultural Stewardship Act Annual Report, April 1, 2011 - March 31, 2012: A Positive Approach." Copies of this report can be obtained by contacting Joyce Knight at telephone (804) 786-3538 or email at joyce.knight@vdacs.virginia.gov. The report can also be obtained by accessing our website at: <http://www.vdacs.virginia.gov/stewardship/index.shtml>. A written request may be sent to Virginia Department of Agriculture and Consumer Services, Office of Policy, Planning and Research, P. O. Box 1163, 102 Governor Street, Suite 219, Richmond, VA 23218. Copies of the report are available without charge.

CRIMINAL JUSTICE SERVICES BOARD

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Criminal Justice Services is conducting a periodic review of **6VAC20-120, Regulations Relating to Criminal History Record Information Use and Security**.

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

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

The comment period begins September 10, 2012, and ends October 1, 2012.

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

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the

public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF CONSERVATION AND RECREATION

Total Maximum Daily Loads for Lower Banister River

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of an implementation plan (IP) for bacteria total maximum daily loads (TMDLs) on a 13.18 mile segment of the Lower Banister River from Elkhorn Creek to Banister Lake, the entire 9.66 miles of Polecat Creek, and 11.78 miles of Sandy Creek from Johns Run to its mouth. These portions of the Banister River watershed are located in Halifax County, including the Town of Halifax. The TMDL study for these stream impairments was completed in November 2007 and can be found in the Bacteria TMDLs for Banister River, Bearskin Creek, Cherrystone Creek, Polecat Creek, Stinking River, Sandy Creek, and Whitethorn Creek Watersheds study report on DEQ's website at <http://www.deq.virginia.gov/tmdl/apptmdls/roankrvr/banister.pdf>.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The final public meeting to discuss the development of the IP for the bacteria TMDLs will be held on Thursday, September 20, 2012, at 7 p.m. at the Mary M. Bethune Complex, 201 Cowford Road, Halifax, VA 24558. At this meeting, a draft of the implementation plan will be discussed and citizens will be able to offer input on and ask questions about the plan.

The 30-day public comment period on the information presented at the meeting will end on October 22, 2012. A fact sheet on the development of the IP is available upon request. Questions or information requests should be addressed to Heather Vereb, Department of Conservation and Recreation. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Heather Vereb, Department of Conservation and Recreation, 8 Radford Street, Suite 102-A, Christiansburg, VA 24073, email heather.vereb@dcr.virginia.gov, telephone (540) 394-2586.

Total Maximum Daily Load for Moores Creek, Lodge Creek, Schenks Branch, and Meadow Creek

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) and implementation plans (IPs) for Moores Creek, Lodge Creek, Schenks Branch, and Meadow Creek in the City of Charlottesville and Albemarle County. These streams were listed on the 2006 and 2008 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's general water quality standard (benthic) for aquatic life. The benthic impairment on Schenks Branch extends 1.138 miles from the headwaters of its tributaries to the Meadow Creek confluence. Meadow Creek is benthically impaired from where it becomes a perennial stream to its confluence with the Rivanna River (4 miles). The benthic impairment on Moores Creek extends 6.377 miles from its confluence with the Ragged Mountain Dam receiving stream downstream to its confluence with the Rivanna River. The Moores Creek watershed includes the tributary locally known as Lodge Creek, which is benthically impaired for 1.57 miles from its headwaters to the confluence with Moores Creek. All four of these impairments were determined to be caused by excess sedimentation.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7.C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The third public meeting on the development of these TMDLs and IPs will be held on Thursday, September 20, 2012, 6 p.m. at the Downtown County Office Building (Board Room 241) located at 401 McIntire Road, Charlottesville, VA 29902. The TMDL document will be available on the DEQ website the day of the meeting for public comment and review: <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx>.

The public comment period for the third public meeting will end on October 22, 2012. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on August 16, 2012.

Director's Order Number Seventy-Five (12)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on August 3, 2012.

Game 1096	Tax Free \$100,000
Game 1167	IGT Slots
Game 1185	World Poker Tour
Game 1187	\$250 Grand
Game 1230	Casino Riches
Game 1234	Smokin' Hot Cash II
Game 1237	Double Your Luck
Game 1239	Fast \$50's
Game 1240	Blackjack
Game 1251	Money Money Money (TOP)
Game 1258	Solid Gold
Game 1263	Nascar
Game 1264	Diamond Dollars
Game 1270	Triple Tripler
Game 1286	Ol' Man Winner
Game 1287	Cat Scratch Fever
Game 1289	Crossword (TOP)
Game 1297	Lucky Dog Doubler
Game 1316	24K (TOP)
Game 1329	Vacation Tripler

The last day for lottery retailers to return for credit unsold tickets from any of these games will be September 7, 2012. The last day to redeem winning tickets for any of these games will be Wednesday, January 30, 2013, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of January 30, 2013, or earlier, will be deemed to have been received on time. This notice amplifies

General Notices/Errata

and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order is effective nunc pro tunc to August 3, 2012, and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto
Executive Director
August 7, 2012

Director's Order Number Eighty-Five (12)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on April 20, 2012.

Game 1054	Take the Money and Run
Game 1183	Deluxe Winner Take All (TOP)
Game 1214	Cold Hard Cash (TOP)
Game 1245	Truckin' for Cash
Game 1252	Jewel 7's (TOP)
Game 1255	Money Flow (TOP)
Game 1256	Diamond Doubler (TOP)
Game 1267	Crazy 7's
Game 1278	Hail to the Redskins
Game 1285	Straight 9's Tripler
Game 1288	10 times the Money (TOP)
Game 1299	5 times the Money (TOP)

The last day for lottery retailers to return for credit unsold tickets from any of these games will be May 25, 2012. The last day to redeem winning tickets for any of these games will be October 17, 2012, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of July 18, 2012, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order is effective nunc pro tunc to April 20, 2012, and shall remain in full force and effect unless amended or rescinded by further Director's Order. This Director's Order supersedes Director's Order Sixty-Six.

/s/ Paula I. Otto
Executive Director
August 14, 2012

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on August 16, 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 Sixty-Eight (12)

Virginia Lottery's "Redskins 80th Anniversary" Final Rules for Game Operation (effective August 7, 2012)

Director's Order Number Seventy-One (12)

Virginia's Instant Game Lottery 1319; "Diamond Bingo" Final Rules for Game Operation (effective August 14, 2012)

Director's Order Number Seventy-Two (12)

Virginia's Instant Game Lottery 1334; "Quick Bucks" Final Rules for Game Operation (effective August 14, 2012)

Director's Order Number Seventy-Six (12)

Virginia's Instant Game Lottery 1353; "Pinball Payout" Final Rules for Game Operation (effective August 14, 2012)

Director's Order Number Seventy-Seven (12)

Virginia's Instant Game Lottery 1371; "RedskinsTM" Final Rules for Game Operation (effective August 7, 2012)

Director's Order Number Seventy-Eight (12)

Virginia's Instant Game Lottery 1374; "Millionaire Mania" Final Rules for Game Operation (effective August 14, 2012)

Director's Order Number Seventy-Nine (12)

Virginia's Instant Game Lottery 1301; "Sizzling 7's" Final Rules for Game Operation (effective August 14, 2012)

Director's Order Number Eighty (12)

Virginia's Instant Game Lottery 1375; "Holiday Cheer" Final Rules for Game Operation (effective August 14, 2012)

Director's Order Number Eighty-One (12)

Virginia's Instant Game Lottery 1377; "Trim the Tree" Final Rules for Game Operation (effective August 14, 2012)

Director's Order Number Eighty-Two (12)

"Redskins Ticket/Hospitality Tent Giveaway Sales Contest" Virginia Lottery Retailer Incentive Requirements (effective August 7, 2012)

Director's Order Number Eighty-Three (12)

"Redskins VIP Bus Trip" Virginia Lottery Retailer Incentive Requirements (effective August 7, 2012)

Director's Order Number Eighty-Four (12)

"Hasbro Ticket Dispenser Program" Virginia Lottery Retailer Incentive Requirements (effective August 14, 2012)

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.

STATE WATER CONTROL BOARD

Proposed Consent Order for Four Winds Club, Inc.

An enforcement action has been proposed for Four Winds Club, Inc., for violations of the State Water Control Law and Regulations at the Four Winds Campground Sewage Treatment Plant in Caroline County. The consent order describes a settlement to resolve violations of Virginia Pollutant Discharge Elimination System Permit No. VA0060429. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 11, 2012, through October 11, 2012.

VIRGINIA CODE COMMISSION

Notice to State Agencies

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

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

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

